Private Nuisance

Background reading:

*Books*

NJ McBride and R Bagshaw, *Tort Law* (Pearson, 2024) ch 17

J Murphy, *The Law of Nuisance* (Oxford: OUP, 2010) chs 1-6

*Articles*

C Gearty, “The Place of Nuisance in a Modern Law of Torts” [1989] CLJ 48

FH Newark, “The Boundaries of Nuisance” (1949) 65 LQR 480

**I Private Nuisance: Scope of the Tort**

**A. Definition**

The Court of Final Appeal in Hong Kong has offered the following definition of private nuisance.

*Leung Tsang Hung v Incorporated Owners of Kwok Wing House* (2007) 10 HKCFAR 480, at 491:

Private nuisance is a tort protecting property rights. It is concerned with the activities of the owner or occupier of property within the boundaries of his own land which may harm the interests of the owner or occupier of other land.

I have defined private nuisance, I hope more accurately, as “A substantial and unreasonable interference with a person’s land or the use or enjoyment of that land”. (See J Murphy, *The Law of Nuisance* (Oxford: OUP, 2010) p 1).

My definition is intended to be an accurate reflection of the true ambit of the tort. It is drawn from precise dicta in the case law, and as such aims to be a summary of the understanding of this tort that can be deduced from that body of case law.

*Jalla v Shell International Trading and Shipping Co Ltd* [2023] UKSC 16

Citing me (among others), the Supreme Court in the UK said in

the tort of private nuisance is committed where the defendant’s activity, or a state of affairs for which the defendant is responsible, unduly interferes with (or, as it has commonly been expressed, causes a substantial and unreasonable interference with) the use and enjoyment of the claimant’s land (Lord Burrows).

Each of the elements in this, my preferred definition, helps elucidate the contents and contours of this tort.

Before doing so, it is helpful to give a few examples of the things that can constitute a nuisance: *viz*:

Noise, smoke, fumes/bad smells, root encroachments, removal of supports and intrusive viewing.

**B. Background**

Notwithstanding the above examples, in HK, many of the cases on this tort—probably unsurprisingly—apply to water leakage rather than noisy neighbours.

But bear in mind, disputes between domestic neighbours are not all of what nuisance is about. For one’s neighbour could well be a factory, a bar or a sports ground.

**NB**  Flat owners might prefer the contract action under the Deed of Mutual Covenant.

**C. “Substantial Interference”**

To sue, a nuisance must be *substantial.* In other words, the principle of *de minimis non curat lex* applies*.*

*Walter v Selfe* (1851) 4 De G & Sm 315

[O]ught this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according to plain and simple notions among the English people? (Knight Bruce VC)

*Fearn v Board of Trustees of Tate Gallery* [2023] UKSC 4

[T]he first question which the court must ask is whether the defendant’s use of land has caused a *substantial* interference” (Lord Leggatt) (Reed & Lloyd-Jones agreed)

To answer the question of whether there has been a substantial interference, the courts have highlighted a few factors that help identify when one has occurred.

**1 Unusual Sensitivity of Claimant**

If a claimant is abnormally sensitive, this may be an indication that, although C is greatly irritated or affected, this may still not amount to a material interference.

*Robinson v Kilvert* (1889) 41 Ch D 88 (the English case in which the principle was minted)

It would, in my opinion, be wrong to say that the doing something not in itself noxious is a nuisance because it does harm to some particular trade in the adjoining property, although it would not prejudicially affect any ordinary trade carried on there, and does not interfere with the ordinary enjoyment of life. (Cotton LJ).

*Hunter v Canary Wharf* [1997] 2 All ER 426 (the principle stands on highest possible authority)

*Fearn v Board of Trustees of Tate Gallery* (above).

The particular sensitivities or idiosyncrasies of those individuals are therefore not relevant, and the law measures the extent of the interference by reference to the sensibilities of an average or ordinary person. (Lord Leggatt)

*Capital Prosperous Ltd v Sheen Cho Kwong* [1999] 1 HKLRD 633 (the principle at work in HK)

I do not see that it is unreasonable for the average Hong Hong person … to take pump-assisted showers between 11pm and midnight. I do not see that a reasonable person living below can object to it. (Muttrie J)

**NB** Different Approach for Sensitive *Buildings*

*Fearn v Board of Trustees for the Tate Gallery* (above)

it is the utility of the actual land, including the buildings actually constructed on it, for which the law of private nuisance provides protection - not for some hypothetical building of “average” or “ordinary” construction and design. This reflects the basic right of a person at common law, discussed earlier, to occupy and build on their land as they choose. (Lord Leggatt).

**2 Location of Claimant’s Premises**

The relevance of C’s neighbourhood is that C’s legitimate expectations in terms of comfort, peace and quiet will vary according to where he lives.

*Sturges v Bridgman* (1879) 11 Ch D 852 (the classic English case)

What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey” (Thesiger LJ).

*Thompson-Schwab v Costaki* [1956] 1 All ER 652

the test as it seems to me … is that which I have stated, namely, whether what is being done interferes with the plaintiffs in the comfortable and convenient enjoyment of their land, regard being had … to the character, as proved, of the neighbourhood (Evershed MR).

The neighbourhood principle has received support in HK.

*Tam Seen Mann Estefania v Chan Norman and Another* (Unreported HCA 627/2010)

A useful test which balances the interest between neighbours as to their respective use of their properties is what is reasonable according to ordinary usages of mankind living in a particular society. In assessing the question of nuisance in the context of Hong Kong, the court should take into account the particular habits of Hong Kong people, in particular later bedtimes.

**NB** Locality is not relevant in cases of property damage.

*St Helens Smelting Co v Tipping* (1865) 11 HL 642

*ACL Electronics (HK) Ltd v Bulmer* Ltd [1992] 1 HKC 133

**D. “Unreasonable Interference”**

Case law has long established that this is a description of the nature of the effect on C (rather than a characterisation of the way that D behaves).

**NB** Strict liability means liability regardless of personal fault, and not liability without fault.

Certain factors shine some light on what is entailed by an unreasonable interference.

**1 Seriousness of the Interference.**

**(a) Duration**

The longer an interference, the more serious it is. And more serious = more unreasonable.

*Matania v National Provincial Bank* [1936] 2 All ER 633

the law, in judging what constitutes a nuisance, does take into account both the object and duration of that which is said to constitute the nuisance.

**(b) Character of the Harm**

It is generally more difficult to justify physical damage to C’s land than amenity nuisance (*ie*, interferences with either the use or the enjoyment of that land).

*St Helens Smelting Co v Tipping* (*supra*): locality has no exculpatory value in property damage cases.

**NB** Gearty once suggested that damage to land cases should be dealt with under the rubric of negligence. But in the oil spillage case of *Jalla v Shell International Trading and Shipping Co Ltd* [2023] 2 WLR 1085 it was held that damage to land qualifies as a form of nuisance.

**2 Character of the Defendant’s User**

*Fearn* (above)

This is now the leading authority on what a reasonable user entails.

The two conditions of [reasonable user are whether] … the acts complained of were (i) necessary for the common and ordinary use and occupation of land, and (ii) “conveniently done” - that is to say, done with proper consideration for the interests of neighbouring occupiers.

If you make an unnecessary/abnormal use of your property, you will fail at limb (1) to show a reasonable user.

But even if you don’t fail at limb (1), you may still fail at limb (2).

Ultimately, it was because D (an art gallery) was providing the public with the chance to intrusively view the Cs that its user was considered unreasonable.

It was not “necessary for the ordinary occupation land”.

Inviting several hundred thousand visitors a year to look out at the view from your building cannot by any stretch of the imagination be regarded as a common or ordinary use of land (Lord Leggatt).

Several well-established factors help illuminate further this aspect of nuisance law.

**(a) D’s malicious activities**

Though liability in nuisance is technically strict, the malice in D’s user can be a material consideration since if D’s user is malicious, he can never justify the interference thereby caused.

*Hollywood Silver Fox v Emmett* [1936] 2 KB 468

*Pong Seong Teresa v Chan Norman* [2014] 6 HKC 515

Where noise is created deliberately and maliciously for the purposes of causing annoyance, its *mala fides* character alone would render it an actionable nuisance even if it would otherwise have been legitimate. (Linda Chan SC.)

**(b) Locality in which D’s activities occur**

Just as C’s location is relevant to the question “what can we reasonably expect C to put up with?” so, too, is D’s location relevant to the issue of “what is it acceptable for D to do?”

*Ball v Ray* (1873) 8 Ch App 467

**(c) Fault on D’s Part?**

In his famous speech in *The Wagon Mound (No 2)* [1967] 1 AC 617 Lord Reid stated that:

Nuisance is a term used to cover a wide variety of tortious acts or omissions and in many negligence in the narrow sense is not essential. An occupier may incur liability for the [e]mission of noxious fumes or noise although he has used the utmost care in building and using his premises ... [And yet] although negligence may not be necessary, fault of some kind is almost always necessary and fault generally involves foreseeability.

*Lau Chun Wing Rod v Incorporated Owners of Po On Building* [2006] HKCU 1364

It is settled law that the exercise of care and skill by a competent contractor or every effort made by the Defendant to prevent a nuisance afford no defence to an action on nuisance. (Wong J.)

**Q** If nuisance is a strict liability tort, why do the courts in water leakage cases routinely seek to identify whether D knew of the leakage problem and whether he had acted reasonably quickly to resolve the problem?

*Tin Kin Ka Clara v Chan Koon Cheong* [2015] HKCU 1029

in order to prove nuisance in a seepage case … a plaintiff must show, besides the seepage itself and the issue of causation, that (i) the defendants actually or constructively knew that the water originated from their premises; and (ii) remedial action was not taken within a reasonable time (Li J).

**(d) The practicability of avoiding an interference**

If D could have taken simple steps to avoid causing disturbance, the fact that he or she does not take those steps may be taken by the courts to support a finding of unreasonable interference.

*Leeman v Montagu* [1936] 2 All ER 1677

**Diagram of the Elements of a Nuisance**

**II Who Can Sue in Private Nuisance?**

**Seriousness of Harm**

Duration of harm

Type of harm

**Character of D’s user**

D’s motives

Locality in which D is situated

‘Fault’ on the part of D?

Could D do same thing differently?

**Unreasonableness of Interference**

Seriousness of the harm

Character of the defendant’s user

**Magnitude of Nuisance**

Sensitivity of C

Location of C’s premises

**Nuisance = Interference with Land, Use of Land or Enjoyment of Land**

The Interference must be (a) Substantial and (b) Unreasonable Interference

The House of Lords, in a landmark decision, set firmly in place the rule that in order to sue in private nuisance C must have aproprietary interest in the land affected.

*Hunter v Canary Wharf* [1997] 2 All ER 426

[A]n action in private nuisance will only lie at the suit of a person who has the right to the land affected ... a mere licensee on the land has no right to sue (Lord Goff).

This principle has been applied locally.

*Ng Hoi Sze v Yuen Sha Sha* [1999] 3 HKLRD 890

[T]he action is not one for causing discomfort to the person but is one which arises because the utility of the land has been diminished by reason of the existence of the nuisance. It is for that reason that mere presence on the land of the Plaintiff is not sufficient. For a Plaintiff to have a cause of action in nuisance, he must have a right to the land. (Rogers JA.)

**III Recognised Heads of Loss in Private Nuisance**

Physical damage is well recognised: eg, the *St Helens* case (above).

So too are annoyances like noise, bad smells etc: these are amenity nuisances.

Even intrusive viewing of a person in their home can be a nuisance.

*Fearn* (above)

Contrary to what is said by the Court of Appeal, however, the claimants’ complaint is indeed one of damage to interests in property. The concepts of invasion of privacy and damage to interests in property are not mutually exclusive. An important aspect of the amenity value of real property is the freedom to conduct your life in your own home without being constantly watched and photographed by strangers (Lord Leggatt).

# A. Personal Injury

*Hunter* (above)

The injury to the amenity of land consists in the fact that persons on it are liable to suffer inconvenience, annoyance or illness (Lord Hoffmann)

AND

In the case of nuisances “productive of sensible personal discomfort”, the action is not for causing discomfort to the person but ... for causing injury to the land.

Many years ago, FH Newark, in a famous article (entitled ‘The Boundaries of Nuisance’) stated that:

[a] sulphurous chimney in a residential area is not a nuisance because it makes householders cough and splutter but because it prevents them taking their ease in their gardens.

*Fearn v Board of Trustees of Tate Gallery* (above)

the harm from which the law protects a claimant is diminution in the utility and amenity value of the claimant’s land, and not personal discomfort to the persons who are occupying it. (Lord Leggatt).

This same reasoning was adopted also in the *Yuen Sha Sha* case (above) by Godfrey JA.

# B. Damage to Chattels

Damage to chattels also recoverable … *with a twist*.

*Anglian Water Services Ltd v Crawshaw Robbins & Co Ltd* [2001] BLR 173

[I]it is possible to regard the interruption to the supply of gas as an interference with the use of gas appliances rather than with a use of land [since replacement electrical appliances can be obtained]. (Stanley Burnton J).

# C. Economic Loss

Consequential economic loss *so long as* it derives from interference with land’s amenity is recognised as recoverable.

*Andrae v Selfridge* [1938] Ch 11

**IV Who Can be Sued?**

**A. Creators of the Nuisance**

The action in private nuisance will not necessarily always be against the owner of neighbouring land.

The law states that he who has created the nuisance will be liable.

*Southwark LBC v Mills* [2001] AC 1 (No liability, on facts)

Nuisance involves doing something on adjoining or nearby land which constitutes an unreasonable interference with the utility of the plaintiff’s land. The primary defendant is the person who causes the nuisance. (Lord Hoffmann).

*Loke Yuen Jean Tak Alice v Wong Kit Ying* [2019] HKCU 2916

The person to be sued for nuisance is the one who has possession and control of the land from which the nuisance emanated … If a nuisance arises prior to a letting, the owner/landlord does not cease to be liable by virtue of parting with possession. If he knew of the potentially harmful condition of the property before letting, or ought to have known of it, he remains liable for harm accruing after the letting… If the nuisance arises after the tenancy is granted, Lord Neuberger PSC in *Lawrence & anor v Fen Tigers Ltd & ors (No 2)* said as follows: “Lord Millett explained in *Southwark London Borough Council v Mills* [2001] 1 AC 1, 22, that, where activities constitute a nuisance, the general principle is that ‘the … persons directly responsible for the activities in question are liable; but so too is anyone who authorised them’”. (Ng J.)

**B. Occupiers**

A fuller picture of occupiers’ potential liability can be put as follows.

Occupier may be liable, even though they did not themselves create the nuisance where:

* They have adopted or continued the nuisance created by another,
* They have adopted or continued a nuisance created by natural processes,
* They have control over the creator of the nuisance (as the *Loke Yuen Jean* dictum, above)

**NB 1** One adopts a nuisance when one makes use of the state of affairs comprising the nuisance. [*Sedleigh Denfield* = authority.]

**NB 2** One continues a nuisance where one fails to abate a nuisance where one has actual or constructive knowledge of the nuisance. [*Sedleigh Denfield* = authority.]

* *Sedleigh‑Denfield v O’Callaghan* [1940] AC 880 (owner/occupier liable for nuisance created by another if he adopts/continues it.
* *Leakey v National Trust* [1980] QB 485 (liability for adopting/continuing nuisances caused by nature: very dry bank of earth liable to result in landslide after heavy rain).
* *Matania v National Provincial Bank* [1936] 2 All ER 633 (liability for acts done by those over whom owner/occupier had control: independent contractors in this case)

*Leung Tsang Hung v Incorporated Owners of Kwok Wing House* (2007) 10 HKCFAR 480

Court of Final Appeal expressly accepted the general principles set out above.

[An owner-occupier] can plainly be expected to have effective control, both physically and legally, over the property in question. Such an owner-occupier is subject to a duty to nullify the hazard if he knows or ought to know of its existence, even though he has done nothing to create it. The hazard may have been created by a trespasseror a by “a secret and unobservable operation of nature” but his omission to neutralize the hazard within a reasonable timeafter acquiring the requisite knowledge or presumed knowledge is actionable (Li CJ).

**V Defences**

Several defences to an action framed in private nuisance exist.

**A. Prescription**

The idea here is that if one uses land in a particular way for 20 years without complaint, then one acquires what is called a prescriptive right to continue to use the land in that way.

*Sturges v Bridgman* (1879) 11 Ch D 852

*Coventry v Lawrence* [2014] UKSC 13

**B. Statutory Authority**

If D is authorised by statute to do a thing, then D is immune from suit for any disturbance caused.

However, awkward questions about interpretation of what exactly is permitted can arise.

*Allen v Gulf Oil Refining Ltd* [1981] AC 1001

*Manchester Ship Canal Co Ltd v United Utilities Water Ltd* [2024] UKSC 22

Applying the general principles … the question … [is] whether there was any provision of the relevant legislation which expressly or impliedly authorised such a trespass or private nuisance. (Lord Reed and Lord Hodge.)

*Lam Yuk Fong v A-G* [1987] HKLR 263

The evidence on behalf of the defendants has satisfied me that collection of refuse in Wellington Street by means of an on-street RCP was essential. But in order to dismiss this action I have further to be satisfied that there was no other way of doing this work and in that regard the onus is on the defendants … [to show] the necessity of the consequence. [But] the nuisance which existed at the material time … was not the inevitable consequence of what the legislature had authorised. (Saied J.)

**Cf Planning Permission**

*Coventry v Lawrence (supra)*

it seems wrong in principle that, through the grant of a planning permission, a planning authority should be able to deprive a property owner of a right to object to what would otherwise be a nuisance … [But] there will be occasions when the terms of a planning permission could be of some relevance in a nuisance case. Thus, the fact that the planning authority takes the view that noisy activity is acceptable after 8.30 am, or if it is limited to a certain decibel level, in a particular locality, may be of real value, at least as a starting point … While the decision whether the activity causes a nuisance to the claimant is not for the planning authority but for the court, the existence and terms of the permission are not irrelevant as a matter of law. (Lord Neuberger.)

**C. Acts of God/Strangers**

Inevitable accidents of nature and nuisances created by third parties which are neither adopted nor continued by D (in the senses discussed above) will not support an action in nuisance against D.

*Sedleigh-Denfield v O’Callaghan* (*supra*)

If you don’t know, and you don’t have *constructive knowledge* of the problem, then you won’t be liable.

**D. Limitation**

All civil law actions must be brought within a statutorily specified period. For nuisance it is 6 years.

But it is also well-established that in the case of nuisance that is ongoing, a fresh cause of action arises each day.

*Delaware Mansions Ltd v Westminster City Council* [2002] 1 AC 321.

So what happens in a case where, because of the way D conducts operations on their premises, an escape of something (eg, oil) occurs that has a lingering effect on C?

*Jalla v Shell International Trading and Shipping Co Ltd* [2023] 2 WLR 1085

There was no continuing nuisance in this case (and there would be no continuing nuisance in the example of the one-off flood) because, outside the claimants’ land, there was no repeated activity by the defendants or an ongoing state of affairs for which the defendants were responsible that was causing continuing undue interference with the use and enjoyment of the claimants’ land. (Lord Burrows.)

**VI Remedies**

Nuisance law supports two main remedies: damages and injunctions.

**A. Injunctions**

It is injunctions that are most commonly sought as the remedy of choice. Indeed, it is fair to say that the presumption in nuisance cases is that an injunction will be granted.

*Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287

Where the injury to the plaintiff’s legal rights is (i) small; (ii) capable of being estimated in money; (iii) can be adequately compensated by a small money payment, and (iv) where the case is one in which it would be oppressive to the defendant to grant an injunction. (Smith LJ.)

Occasionally, courts refuse injunctions. Gravity of interference and public interest are salient, here.

Gravity of interference

*Cooke v Forbes* (1867) LR 5 Eq 166

Public Interest

*Wheeler v JJ Saunders Ltd* [1995] 2 All ER 697

*Fearn* (above)

I do not suggest that it is wrong to take account of the public interest. What is wrong is to treat it as relevant to the question of liability for nuisance rather than only, where liability is established, to the question of what remedy to grant (Lord Leggatt).

**NB** Even if an injunction is refused, D may still have to pay damages in lieu.

*Coventry v Lawrence* (*supra*)

[T]he court might well be impressed [in deciding whether to grant damages in lieu of an injunction] by a defendant’s argument that an injunction would involve a loss to the public or a waste of resources on account of what may be a single claimant (*per* Lord Neuberger).

*Lo Yu Chu v Kam Fu Lai Development Co Ltd* [1994] 3 KKC 18

What has caused me some concern is the question of the likely effect on the shop-owners… There has been no evidence as to whether or not the air-conditioner can be relocated, although the judge below clearly considered that it may be difficult. If [they] … consider that the effect on them of an injunction will be so damaging that it should not be granted, there is nothing to prevent them coming to the court to seek to have the injunction set aside. (Penlington JA.)

**B. Damages**

As regards damages, the idea is to pay to C the difference between the value of the protected interest before and after the nuisance.

*Andreae v Selfridge & Co* [1938] Ch 1

*Wong Shiu Hung v Lui Kuo* [2001] HKCU 551

**NB** In cases of physical loss, damages are measured in two ways: (1) cost of repair or (2) drop in property value (whichever is lower).

**Mechanics of a nuisance action: the various elements combined**

A substantial and unreasonable interference? Action fails if not.

If yes

Has C got a proprietary interest in land affected? Action fails if not.

If yes

Creator of nuisance

Someone who adopted the nuisance

Someone who continued the nuisance

Someone with control over the creator

Is D Action fails if answer is ‘no’ in all cases.

If yes

Can loss be seen as damage to (amenity of) land? Action fails if not.

If yes

Can D raise a recognised defence? Action fails if he can do so.

If no

Action succeeds

**Public Nuisance**

**Background Reading**

*Books*

J Murphy, *The Law of Nuisance* (Oxford: OUP, 2010) ch 7

NJ McBride and R Bagshaw, *Tort Law* (Pearson, 2024) ch 24.

*Article*

JR Spencer, “Public Nuisance – A Critical Examination” [1989] CLJ 55

**I Introduction**

Public nuisance is an odd branch of the law, as was captured beautifully by Spencer as follows:

Why is making obscene telephone calls like laying manure in the street? Answer: in the same way as importing Irish cattle is like building a thatched house in the Borough of Blandford Forum; and as digging up the wall of a church is like helping a homicidal maniac to escape from Broadmoor; and as operating a joint stock company without a Royal charter is like being a common [s]cold; and as keeping a tiger in a pen adjoining the highway is like depositing a mutilated corpse on a doorstep.

For there to be a public nuisance, there must be an infringement of a public right. And this tallies with the fact that public nuisances are, first and foremost, crimes.

They occur where there has been a *common injury* to a broad class of Her Majesty’s subjects elsewhere than on their premises.

*R v Rimmington; R v Goldstein* [2008] 1 AC 459

Cf *A-G v PYA Quarries* [1957] 2 QB 169

BUT this must now be treated as wrong in law. Public nuisances have at their heart public rights; private nuisances have at their heart, private rights.

Most commonly, cases of public nuisance involve the blockage of highways and other thoroughfares which bears out the public rights observation.

*Rose v Miles* (1815) 4 M & S 101

**II But hang on.…. Is Public Nuisance even part of Tort Law?**

*(a) Nick’s McBride’s view*

Nick McBride says, it is “a strange sort of tort, if it is a tort at all”.

“the duty that someone breaches when they commit a public nuisance is a duty imposed for the benefit of the public as a whole”. (ibid).

So the argument goes, public law – because it revolves around public duties/rights – is hard to accept as part of tort law.

*(b) The orthodox view*

The courts have always treated public nuisance as part of tort law.

*(c) My view*

- We must take what the courts say seriously when we create maps of the law. And there is nothing especially neat and tidy about tort law.

**III Necessary Land Connection?**

It follows from the many obstructed highway cases that there need not necessarily be a proprietary interest on C’s part. Nor need there be one on D’s part.

*Gillingham BC v Medway (Chatham) Dock* [1993] QB 343

**IV How Public is Public?**

For a public nuisance to be actionable in tort, it must affect a broad range of people (a broad class of the citizenry).

*A-G v PYA Quarries* (*supra*)

public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large. (Denning LJ.)

*Shek Sze Ming v Yiu Yuet Sim* [2015] HKEC 1826

**V Particular Damage?**

Not only must C show that s/he was a member of the relevant class, s/he must also show that the damage suffered went above and beyond that suffered by the other members of the class.

*Tate & Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509

*Trevett v Lee* [1955] 1 WLR 113

**NB** *Wilkes v Hungerford Market* (1835) 2 Bing NC 281.

**VI Personal Injury?**

Although the tort of private nuisance will not tolerate claims for personal injury *per se* (see *Hunter v Canary Wharf*, *supra*) public nuisance will permit such claims.

*In re Corby Group Litigation* [2009] 2 WLR 609.

*Chung Man Yau v Sihon Co Ltd* [1996] 3 HKC 614

**VII Who is Liable for a Public Nuisance?**

If one creates the public nuisance one is liable. And even if one does so inadvertently one can still be liable if one ought to have known (or did know) that a public nuisance would result

*R v Goldstein* [2008] 1 AC 459

*Wandsworth LBC v Railtrack* [2002] QB 756

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