= Nuisance in English law =

Nuisance in English law is an area of tort law broadly divided into two torts ; private nuisance , where the actions of the defendant are " causing a substantial and unreasonable interference with a [claimant] ' s land or his use or enjoyment of that land " , and public nuisance , where the defendant 's actions " materially affects the reasonable comfort and convenience of life of a class of Her Majesty 's subjects " ; public nuisance is also a crime . Both torts have been present from the time of Henry III , being affected by a variety of philosophical shifts through the years which saw them become first looser and then far more stringent and less protecting of an individual 's rights . Each tort requires the claimant to prove that the defendant 's actions caused interference , which was unreasonable , and in some situations the intention of the defendant may also be taken into account . A significant difference is that private nuisance does not allow a claimant to claim for any personal injury suffered , while public nuisance does .

Private nuisance has received a range of criticism , with academics arguing that its concepts are poorly defined and open to judicial manipulation ; Conor Gearty has written that " Private nuisance has , if anything , become even more confused and confusing . Its chapter lies neglected in the standard works , little changed over the years , its modest message overwhelmed by the excitements to be found elsewhere in tort . Any sense of direction which may have existed in the old days is long gone " . In addition , it has been claimed that the tort of private nuisance has " lost its separate identity as a strict liability tort and been assimilated in all but name into the fault @-@ based tort of negligence " , and that private and public nuisance " have little in common except the accident of sharing the same name " .

= = History = =

The tort of nuisance has existed since the reign of Henry III , with few changes , and most of them merely technical . It originally came from the Latin nocumentum , and then the French nuisance , with Henry de Bracton initially defining the tort of nuisance as an infringement of easements . The tort was in line with the economic status quo of the time , protecting claimants against their neighbours ' rights to develop land , and thus has been described as " rural , agricultural , and conservative " . There were initially four remedies for nuisance ; the assize of nuisance , similar to the assize of novel disseisin , which was limited to situations where the defendant 's actions interfered with the claimant 's seisin ; the action guod permittat prosternere , where the land in question was alienated ; the writ of trespass ; and the " action upon the case for nuisance " , which became the main remedy . This was because it was far faster than the other writs and actions , and unlike them did not require that both parties be freeholders . It was , however , limited to damages , and unlike the other remedies did not allow for abatement .

By the 17th century the judicial philosophy had changed to allow the protection of a claimant 's enjoyment of their land , with the duty being on the party that caused the nuisance to prevent it : " as every man is bound to look to his cattle , as to keep them out of his neighbour 's ground ; so he must keep in the filth of his house of office , that it may not flow in upon and damnify his neighbour " . During the 19th century and the Industrial Revolution , the law of nuisance significantly changed ; rather than the previous tests a standard of care was instead expected , with different standards applying to individuals and companies . In reaching these decisions the courts " effectively emasculated the Law of Nuisance as a useful curb on industrial pollution " . In St Helen 's Smelting Co v Tipping , for example , several judges " were explicit in suggesting that they were affected by the adverse effect of a more draconian view on the economic welfare of the country 's industrial cities " . This contrasted with the previous view , which was that when liability was established for a case where the defendant 's actions had interfered with the enjoyment of land , the defendant would be liable however trivial the interference .

The decisions reached during this period vary , however , mostly due to the differing judicial philosophies of the time . While A.V. Dicey maintained that the prevalent philosophy was one of laissez faire thanks to the influence of philosophers and economists such as Adam Smith , Michael

W. Flinn asserted that :

Another common error ... has been the assumption that the classical economists were the only effective influence on social and economic policy in the early and mid @-@ nineteenth century . This is a curiously perverse view , since it ignores powerful voices like those of Bentham , Chadwick , the social novelists , many by no means inarticulate members of the medical profession , the humanitarians , the Christian Socialists and most sections of the many working class movements . There was in short , nothing approaching a consensus of opinion concerning laissez @-@ faire and state intervention , even in the very narrow social sector represented by governments , Parliament , and the press . In practice the ears of ministers were assaulted by a confused babble of voices rather than bewitched by the soft whisper of a single plea for inaction .

= = Private nuisance = =

Private nuisance was defined in Bamford v Turnley , where George Wilshere , 1st Baron Bramwell defined it as " any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant 's] land or his use or enjoyment of that land " . Private nuisance , unlike public nuisance , is only a tort , and damages for personal injuries are not recoverable . Only those who have a legal interest in the affected land can sue ; an exception was made in Khorasandjian v Bush , where the Court of Appeal held that a woman living in her mother 's house was entitled to an injunction to prevent telephone harassment despite having no legal interest in the property . In Hunter v Canary Wharf Ltd , however , the House of Lords rejected this development , arguing that to remove the need for an interest in the affected property would transform the tort of nuisance from a tort to land into a tort to the person . The liable party under private nuisance is the creator , even if he is no longer in occupation of the land or created a nuisance on somebody else 's land . In Sedleigh @-@ Denfield v O 'Callaghan , it was held that the defendant was liable for a nuisance (a set of water pipes) even though he had not created it , because he had used the pipes and thereby " adopted " the nuisance .

There is a general rule that a landlord who leases a property is not liable for nuisances created after the occupier takes control of the land . There is an exception where the lease is granted for a purpose which constitutes a nuisance , as in Tetley v Chitty , or where the nuisance is caused by their failure to repair the premises , as in Wringe v Cohen . The landlord is also liable were the nuisance existed before the land was let , and he knew or ought to have known about it . Under the principle of vicarious liability , an occupier of land can also be liable for the actions of their employees ; in Matania v National Provincial Bank , it was also established that they could be liable for the activities of independent contractors under certain circumstances .

For there to be a claim in private nuisance , the claimant must show that the defendant 's actions caused damage . This can be physical damage , as in St Helen 's Smelting Co v Tipping , or discomfort and inconvenience . The test for remoteness of damage in nuisance is reasonable foreseeability , as established in Cambridge Water Co Ltd v Eastern Counties Leather plc ; if the defendant was using their land unreasonably and causing a nuisance , the defendant is liable even if they used reasonable care to avoid creating a nuisance . The test is whether or not the nuisance was reasonably foreseeable ; if it was , the defendant is expected to avoid it .

= = = Interference = = =

The claimant must first show that the defendant 's actions have caused an interference with their use or enjoyment of the land . These interferences are indirect , and almost always the result of continuing events rather than a one @-@ off incident . This interference may be a physical invasion of the land , such as in Davey v Harrow Corporation , noise , as in Christie v Davey , or smells , such as in Wheeler v J J Saunders . The courts have allowed cases where the interference causes emotional distress , as in Thompson @-@ Schwab v Costaki , but have been loath to protect recreational facilities or " things of delight " ; things such as the blocking of a pleasant view or a television signal are not considered a nuisance . The latter was discussed in Hunter v Canary Wharf

Ltd , where the claimants argued that the blocking of their television signal by the construction of the skyscraper at One Canada Square was a nuisance . The House of Lords rejected this argument . There are rights to land known as servitudes , such as the right to light through windows or the right of support . An occupier can also be liable for an interference that is naturally arising , assuming they are aware of the interference 's existence and fail to take reasonable precautions , as in Leakey v National Trust , which established that in such situations " the standard ought to be to require of the occupier what is reasonable to expect of him in his individual circumstances " . This principle was extended in Holbeck Hall Hotel v Scarborough Borough Council , where the Court of Appeal said that if a landowner knows or ought to know that their property may cease to support another 's , they are required to take reasonable precautions or they will be liable .

= = = Unreasonableness = = =

While there is no set definition of what is or is not unreasonable , factors that are taken into account include any " abnormal sensitivity " of the claimant , the nature of the locality where the nuisance took place , the time and duration of the interference and the conduct of the defendant . " Abnormal sensitivity " is where the claimant 's damaged property is particularly sensitive to damage by the defendant 's actions . In Robinson v Kilvert , it was established that if the action of the defendant would not have caused damage were it not for this abnormal sensitivity , the defendant is not liable . However if the damage was caused to abnormally sensitive property but would also have damaged non @-@ sensitive property , the defendant is liable , as in McKinnon Industries v Walker . This was because it infringed on the " right to ordinary enjoyment " ; as a result , the claimant could claim for his more sensitive activities as well .

The locality where the interference occurred also influences whether or not it was unreasonable ; in Sturges v Bridgman , Thesiger LJ wrote that " what would be a nuisance in Belgrave Square [a residential area] would not necessarily be so in Bermondsey [a smelly industrial area] " . If an activity is out of place with the locality , it is likely to be held as unreasonable . However , the nature of areas can change over time ; in Gillingham Borough Council v Medway (Chatham) Dock Co Ltd , it was held that the granting of planning permission to develop a commercial dock in an area changed that area 's character , preventing the local residence from claiming in private nuisance for the disturbance the dock created . The granting of planning permission does not constitute immunity from a claim in nuisance , however ; in Wheeler v Saunders Ltd. the Court of Appeal said that it would be " a misuse of language to describe what has happened in the present case as a change in the character of the neighbourhood . It is a change of use of a very small piece of land ... it is not a strategic planning decision affected by considerations of public interest . Unless one is prepared to accept that any planning decision authorises any nuisance which must inevitably come from it , the argument that the nuisance was authorised by planning permission in this case must fail " . In situations where the defendant 's activities cause physical damage , as in St Helen 's Smelting Co v Tipping , the locality of the activities is not a factor in deciding their unreasonableness .

The time and duration of the activity is also taken into account when determining unreasonableness . Activities may be reasonable at one time but not at another ; in Halsey v Esso Petroleum , filling oil tankers at 10am was held to be reasonable , but the same activity undertaken at 10pm was unreasonable . A private nuisance is normally a " continuing state of affairs " , not a one @-@ off situation ; there are exceptions , such as in De Keyser 's Royal Hotel v Spicer , where piledriving at night was considered a nuisance . In such situations , the normal remedy is to grant an injunction limiting the time of the activity . Another exception was found in British Celanese v AH Hunt Ltd , where an electronics company stored foil strips on their property which blew onto adjoining land , causing the power supply to a nearby yarn manufacturers to be cut off . A similar incident had occurred 3 years earlier and the defendants had been warned to store their strips properly ; it was held that even though the power cut was a one @-@ off event , the method of storing the foil strips constituted a continuing state of affairs , and the defendants were liable .

= = = Conduct of the defendant = = =

In some circumstances , the conduct of the defendant can be a factor in determining the unreasonableness of their interference . In this situation the motives of the defendant and the reasonableness of their conduct are the factors used to determine the unreasonableness of their actions . This is one of the few exceptions to the rule that malice is not relevant in tort law . In Christie v Davey , the defendant was deliberately creating a noise to frustrate the claimants ; based on this , it was held that their actions were malicious , unreasonable , and amounted to a nuisance .

= = = Issues with private nuisance = = =

The idea of private nuisance has been criticised by academics for at least 50 years . Criticism centres on the free rein given to the judiciary and the lack of concrete definitions for legal principles ; the idea of " reasonableness " , for examples , is frequently bandied about , but " rarely examined in detail , and it would be a brave person who would attempt to draw out a definition " . While a definition for private nuisance is easy to find , the regularly accepted one does not consider that most private nuisance cases involve two occupiers of land ; the " nuisance " has moved from the defendant 's land to the claimant 's land . Some judicial rationes decidendi , such as that of Lord Wright in Sedleigh @-@ Denfield v O 'Callaghan , seem to indicate that private nuisance is only valid in situations where there are two occupiers of land . Despite this , definitions of private nuisance fail to include any reference . Academics also assert that the tort of private nuisance has " lost its separate identity as a strict liability tort and been assimilated in all but name into the fault @-@ based tort of negligence " . Conor Gearty supports the assertion that private nuisance is confused , and also claims that private nuisance is significantly different from public nuisance ; " they have little in common except the accident of sharing the same name ... Private nuisance has , if anything , become even more confused and confusing . Its chapter lies neglected in the standard works , little changed over the years , its modest message overwhelmed by the excitements to be found elsewhere in tort . Any sense of direction which may have existed in the old days is long gone " .

= = Public nuisance = =

Public nuisance concerns protecting the public , unlike private nuisance , which protects an individual . As such it is not only a tort but also a crime . In Attorney @-@ General v PYA Quarries Ltd , it was defined by Romer LJ as any act or omission " which materially affects the reasonable comfort and convenience of life of a class of Her Majesty 's subjects " . Because of the wide definition given , there are a large range of issues which can be dealt with through public nuisance , including picketing on a road , as in Thomas v NUM , blocking a canal , as in Rose v Miles , or disrupting traffic by queuing in a road , as in Lyons v Gulliver . A significant difference between private and public nuisance is that under public , one can claim for personal injuries as well as damage to property . Another difference is that public nuisance is primarily a crime ; it only becomes a tort if the claimant can prove that they suffered " special damage " over and above the effects on the other affected people in the " class " . The test for the required size of a " class " was also discussed in Attorney @-@ General v PYA Quarries Ltd , with the court concluding that the test was whether the nuisance was " 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 " .

Because public nuisance is primarily a criminal matter , and affects a " class " of people rather than an individual , claims are normally brought by the Attorney General for England and Wales as a " relator " , representing the affected people . Other members of the affected class are allowed to sue individually , but only if they have suffered " special damage " . The potential defendants in public nuisance claims are the same as those in private nuisance , with their liability dependent on a test of reasonableness ; in public nuisance , however , this is determined by looking solely at the interference , not the defendant 's actions .

= = Defences = =

There are several defences to nuisance claims ; in Nichols v Marsland , for example , " Act of God " was accepted as a defence . One defence is that of " 20 years prescription " , which is valid for private nuisance but not public . If a private nuisance continues for 20 years , it becomes legal by prescription , assuming the defendant can show that it has been continuous and the claimant has been aware of it . A limitation is that the 20 years is from when the activity became a nuisance , not from when the activity started . In Sturges v Bridgman , the claimant , a doctor , lived next to a " confectionery business " . Vibrations and noises coming from this business continued for over 20 years without causing the doctor nuisance , and the doctor only complained after building a consulting room in his garden . It was held that the actual nuisance only started when the consulting room was built and the activity began to affect the doctor , not when the activity started . A second defence is statutory authority , when an activity is authorised by a piece of legislation ; this applies to both public and private nuisance . This applies even when the activity is carried out not directly in line with the statute , but intra vires . In Allen v Gulf Oil Refining Ltd , the defendant was authorised to build an oil refinery by an Act of Parliament . The Act gave no express authority to operate it , and after it came into operation the claimant argued that it caused a nuisance through the smell and noise . The House of Lords held that it had statutory authority to operate the refinery , saying " Parliament can hardly be supposed to have intended the refinery to be nothing more than a visual adornment to the landscape in an area of natural beauty " . The statutory authority defence has recently been subject to legislative consideration in the Planning Act 2008 , which expands the defence to over 14 types of infrastructure development .

= = Remedies = =

There are three possible remedies where a claimant is found to have committed a nuisance ; injunctions , damages and abatement . Injunctions are the main remedy , and consist of an order to stop the activity causing the nuisance . They may be " perpetual " , completely forbidding the activity , or " partial " , for example limiting when the activity can take place . Damages are a monetary sum paid by the defendant for the claimant 's loss of enjoyment or any physical damage suffered ; they may be paid for things as varied as loss of sleep or any loss of comfort caused by noise or smells . Abatement is a remedy that allows the claimant to directly end the nuisance , such as trimming back a protruding hedge . If the abatement requires the claimant stepping onto the defendant 's land , he must give notice or risk becoming a trespasser .