

TORTS CASE NOTES INDEX

Case	Year	Court	Key Words/ Summary	Themes	Page
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<i>*Public nuisance cannot be tested.</i> (PRIVATE) NUISANCE					
St Helen's Smelting Co v Tipping	1865	House of Lords	Smelting factory killing leaves. Physical damage goes beyond the reasonableness allowed by locality.		1
Robinson v Kilvert	1889	CoA (UK)	Paper being damaged upstairs. Must be reasonable damage (not "hypersensitive") to constitute nuisance.		1
Hollywood Silver Fox Farm v Emmett	1936	King's Bench	D stopped silver foxes from being born by shooting off gun. Bc undertaken maliciously , constitutes a nuisance. Mentions: <u>Bradford Corp v Pickles [1895]</u> ; <u>Allen v Flood [1898]</u> ; <u>Christie v Davey [1893]</u> .		1
Munro v Southern Dairies	1955	SC (Vic)	Horse smell on a dairy farm. D's conduct was acceptable, but interference was substantial bc long and continuous.		2
Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd ("Wagon Mound (No 2)")	1967	Privy Council	2 ships lost by fire suing WM, said fire was caused by D's neg in spilling fuel oil into harbour. Held that test for remoteness of damage is same in private nuisance+ neg.		3
Seidler v Luna Park Reserve Trust	1995	Unreported (NSW)	Rollercoaster was too loud; Judgement balances the livelihood of the park with the rights of the residents.		3
Hunter v Canary Wharf Ltd	1997	HoL	UK TV Reception- not a nuisance [unlike Canadian <u>Nor-Video Services v Ontario Hydro (1978)</u>]. Ps must have legal property rights/ exclusive possession of the land.		3
Stockwell v State of Victoria	2001	SC (Vic)	Wild dogs on private property. Gov failed to take reasonable measures to rectify the problem. P wins.		4

NEGLIGENCE

GENERAL DUTY OF CARE					
Donoghue v Stevenson	1932	HoL	Snail in soda. Manufacturer has DoC to cons if neither cons has received product+ reasonable chance to inspect.		4
Grant v Aus Knitting Mills	1936	P. Council	Underwear case; Adopts prec from D v S in Aus c. law.		5
Hedley Byrne & Co. v Heller & Partners Ltd	1964	HoL	Bank had disclaimer so not liable for bad advice given to P (an advertising agency). SEE ALSO Pure Economic Loss.		5
Dorset Yacht Co Ltd v Home Office	1970	HoL	10 borstal boys, 3 officer; train exercise; damaged yacht. Trial allowed. Gives steps for adopting precedent for neg.		6
Hargrave v Goldman	1963	HCA	Fire on a farm, spread to neighbour. N sued. Ap allowed.		7
Sullivan v Moody	2001	HCA	Father falsely accused of child abuse. No DoC owed to parent; priority is child. Words are not grounds for neg.		8
DUTY: PHYSICAL INJURY AS A RESULT OF ACTS OR OMISSIONS					
Chapman v Hearse	1961	HCA	Doc helps in car crash; gets killed. Guy he helps is liable bc was RF that someone would help original crash guy.		9
Rootes v Shelton	1967	HCA	W-skier injured. Boat driver liable. Inherent risk (cLaw).		10
Romeo v Conservation Commission of the NT	1998	HCA	16yr old fell off cliff. Danger was clear + RF w/o the necessity of a sign. SEE ALSO: BREACH.		11
Modbury Triangle Shopping Centre v Anvil	2000	HCA	Employee injured late in parking lot. Occ. isn't liable for unknown's actions. Proximity (Heyman+Moody= demise)		12
Rankin v Gosford	2015	NSW CoA	Modbury applied.		13
Caltex Refineries Pty Ltd v Stavar	2009	NSW CoA	Wife gets asbestos poisoning. Salient features; brilliant list.		13
Graham Barclay Oysters Pty Ltd v Ryan	2002	HCA	Poisoned oysters eaten by Ryan (Plaintiff). Defines the incremental approach. SEE ALSO: LANDLORD'S DoC.		14

FINAL TORTS CASE NOTES

(PRIVATE) NUISANCE

<i>St Helen's Smelting Co v Tipping (1865) 11 HLC 642</i> House of Lords	
<i>Material Facts</i>	• D's copper smelting property was quite close to the P's 1300 acre manor house, who complained that fumes from the smelting were damaging trees and shrubs on the P's land. • There were several industrial businesses in the locality including and alkali works. The defendant argued that the use of property was reasonable given the locality and the smelting works existed before the claimant purchased the property.
<i>Legal Reasoning</i> [Lord Westbury LC]	• In a large manufacturing district, a landowner must put up with some inconvenience arising from trade operations which are necessary for commerce. Nonetheless, where the interference by a defendant causes a plaintiff to suffer a "<i>sensible material injury</i>" to his/her property (physical damage), said that prima facie is established (and locality thus did not apply). • Where there is physical damage to property, the locality principle has no relevance. It is no defence that the claimant came to the nuisance. • "<i>If a man lives in a town, it is necessary that he should subject himself to the consequences of those operations of trade which may be carried on in his immediate locality... But when an occupation is carried on [resulting in] material injury to property, then there unquestionably arises a very different consideration.</i>" • "<i>In a case of that description, the submission which is required from persons living in society to that amount of discomfort which may be necessary for the legitimate and free exercise of the trade of their neighbours, would not apply to circumstances the immediate result of which is sensible injury to the value of the property.</i>"
<i>Judgement and Ratio</i>	• Held that the plaintiff's action succeeded as his property had suffered material damage. Thus, the nuisance had to stop.

<i>Robinson v Kilvert (1889) 41 Ch D 88 (UK)</i> Court of Appeal (Chancery division)	
<i>Material Facts</i>	• Ds, who were manufacturers of paper boxes, leased the upstairs floor of their warehouse to the P for use as a storage space for paper and twine. Ds kept the downstairs floor themselves. • Hot air from the Ds' manufacturing processes rose from the defendant's floor of the warehouse to the plaintiff's floor, where it crinkled the brown paper bag stored there, rendering it useless.
<i>Legal Reasoning</i> [Lopd LJ]	• The Court of Appeal held that the P's action in nuisance failed, because the hot air rising from the Ds' premises would not have interfered unduly with any ordinary use of the P's premises. • "<i>A man who carries on exceptionally delicate trade cannot complain because it is injured by his neighbour doing something lawful on his property, if it something which would not injure anything but an exceptionally delicate trade.</i>"
<i>Judgement and Ratio</i>	• As such, the defendant's conduct could not constitute a nuisance merely because the plaintiff chose to carry on a hypersensitive business.

<i>Hollywood Silver Fox Farm v Emmett [1936] 2 KB 468</i> King's Bench Division	
<i>Material Facts</i>	• D fell out with his neighbour, the P, who owned a silver fox farm. Knowing that silver foxes were particularly sensitive to sudden noise, the defendant discharged guns on his own property with the intention of adversely affecting the foxes' breeding season.
<i>Legal Reasoning</i> [Macnaghten J]	• "<i>Mr Roche (D's lawyer) submitted that the defendant was entitled to shoot on his own land, and that even if his conduct was malicious he had not committed any actionable wrong.</i>" 779/1 • Roche used the case of Bradford Corp v Pickles [1895] AC 587: - Bradford Corp sought to restrain Mr Pickles from sinking a shaft on land that belonged to him because, according to their view, his object in sinking the shaft was to draw away from their land water which would otherwise come into their reservoirs. They said Mr Pickles was acting maliciously, his sole object to do harm to the Corporation. - HoL (in decided that "<i>in such a case, the motive of the defendant is immaterial.</i>" 779/2

- **Allen v Flood [1898] AC 1:** In *Pickles*, “acts done by D upon his land were not actionable when they were within his legal rights, even though his motive was to prejudice his neighbour.” 780/3
- Roche refers to **Robinson v Kilvert (1889) 41 Ch D 88**; said that “the keeping of a silver fox farm is not an ordinary use of land, and that the shooting who have caused no alarm to the animals”
- J mentions **Christie v Davey [1893] 1 Ch 316**:
 - Ps gave music lessons in half of their semi-detached house. D lived in other half, and he sent a letter to Ps complaining of the noise made by their music. After receiving no response to the letter, D began “knocking on the party wall, beating on trays, whistling...”
 - Court held that noises made by D **did** constitute a nuisance because of malicious intent.
 - North J: “The noises which were made in the D’s house were not of the legitimate kind... were made deliberately and maliciously for the purpose of annoying the plaintiffs.”
- Quotes from **Allen v Flood**, Lord Watson: “No proprietor has an absolute right to create noises upon his own land, because any right which the law gives him is qualified by the condition that it must not be exercised to the nuisance of his neighbours or of the public. If he violates that condition he commits a legal wrong, and if he does so intentionally he is guilty of a malicious wrong, in its strict sense.” Thus, Macnaghten J believes *Pickles* has no bearing here.
- Malice on the part of the defendant was held to outweigh the particular sensitivity of the plaintiff. Malice on the part of the defendant renders unreasonable an interference that might otherwise be reasonable, as a defendant who uses his or her property maliciously to cause interference cannot be regarded as having acted reasonably.

First 3 case notes