

Private Nuisance

1. Locus Standi
2. Indirect Interference
3. Material harm to the plaintiff's land and or unreasonable substantial interference with the plaintiff's enjoyment of the land.

The plaintiff must establish that these matters constituted a substantial and unreasonable interference with his use and enjoyment of his land: *Goldman v Hargrave*. Includes Tenants: *Deasy Investments* [1996] QCA 466.

Locus Standi (Who may sue?)

This requires that the defendant has exclusive possession of the property interfered with, ie by means of a proprietary interest (*Hunter v Canary Wharf*).

Does not protect people without proprietary interest in the land: *Hunter v Canary Wharf*
This includes: a licensee without permission, a lodger or an invitee.

Who can be sued?

Creator of the nuisance

Creators of the nuisance may be liable even where they are not in control or occupation of the land on which they commit the acts of nuisance: *Hargrave v Goldman*, *Fennell v Robson*

If the occupier (owner of the place) created the nuisance they can be sued: Sedleigh-Denfield v O'Callaghan.

Occupier

Occupiers may be responsible for the nuisance created by third parties where:

- The occupier is or ought to be aware of it: *Montana Hotels Pty Ltd v Fasson Pty Ltd* and;
- The occupier adopts the nuisance or passively lets it continue: *Challen v The McLeod Country Golf Club* [2004] QCA 358.
- A landlord will be liable for a nuisance created by a tenant where the landlord lets the premises for a particular activity and the nuisance was an inevitable by-product, or nearly certain consequence of that activity, or where the landlord directly participated in the nuisance: *Sedleigh-Denfield v O'Callaghan*.

Landlords

- A landlord will be liable for a nuisance created by a tenant where the landlord lets the premises for a particular activity and the nuisance was an inevitable by-product, or nearly certain consequence of that activity, or where the landlord directly participated in the nuisance: *Thompson-Schwab v Costaki*
- May also be liable if trespassers who are allowed to stay on their land commit nuisance: *Lippiatt and Another v South Gloucestershire Council*
- May be liable if they specifically authorise others to commit nuisance (hire out a hall for parties): *De Jager v Payneham & Magill Lodges Hall Inc*

Nuisance by natural causes

Where a nuisance has been created by natural causes, the occupier is liable if: *Goldman v Hargraves*

- They know or ought to know of the existence of the nuisance;
- They omit to remedy it within a reasonable time after they were aware or ought to have been aware of it; or
- It is foreseeable that damage could occur.

Examples that are too trivial

- Interference with TV reception
- Obstruction of a view
- Overlooking: *Victoria Park Racing v Taylor*, unless it becomes watching and besetting: *Raciti v Hughes*
- Obstruction of a light
- Activities of neighbours not resulting in emanations: *Hunter v Canary Wharf*
- Unsightliness of neighbours property

Serious and unreasonable interference

Interference that affects the plaintiff's use and enjoyment of his property may be of two types, material/tangible damage or intangible interference: *St Helen's Smelting Co v Tipping*.

Personal injury not actionable: *Hunter & Ors v Canary Wharf Ltd* [1997] AC 655

Must be reasonably foreseeable: *Cambridge Water Co v Eastern Counties Leather PLC*; *Gales Holdings Pty Ltd v Tweed Shire Council*.

This requires whether it was far fetched or fanciful?

Material/tangible damage

Where the interference consists of a damage to the land or the building or chattels on it, the interference will be a private nuisance provided it is more than trivial - *Halsey v Esso Petroleum*.

Where the claim is for material damage, the damage must be reasonably foreseeable: *Gales Holding Pty Ltd v Tweed Shire Council* [2013] NSWCA 382

Examples include:

- Damage by fire: *Goldman*
- Damage by flood: *Corbett v Palls*
- Damage by tree roots: *Marshall v Berndt*
- Undermining the support of the land: *Kebewar Pty Ltd v Harkin* [1987] 9 NSWLR 738
- Damage by golf balls: *Lester-Traves v City of Frankston*
- Damage to paintwork by acid smuts: *Halsey v Esso Petroleum Co Ltd*

Note: locality of the land is irrelevant: *Halsey*

Intangible

Smells

Smells emissions need not be injurious to health and property to constitute nuisance, but if they are inherently harmful it could be nuisance: *Bone v Seale*; *Domachuk v Feiner*.

Noise

Note: even if it is for the public benefit, this does not act as a defence to nuisance: *Dennis and Ministry of Defence*. This is an issue for remedies.

Other examples

- Encroaching tree branches: *lemmon v Webb*
- Harrassing telephone calls: *Khoransidijan v Bush*
- Planes flying overhead: *Dennis v Ministry of Defence*
- Watching and besetting (picketing): *Animal Liberation Inc & Anor v Gasser & Anor*
- Cricket balls or Golf Balls hit onto property: *Miller v Jackson; Lester-Travers v City of Frankston; Campbelltown Golf Club Limited v Winton & Anor*

Factors pointing towards serious interference/unreasonable

1. Location
2. Frequency
3. Sensitivity of person affected
4. Malice by the defendant

Locality

Does the interference go beyond what an ordinary person should have to put up with in that locality? *Halsey*

Frequency

Time of day, duration, frequency and extent of interference will be considered here.

Serious interference for a short period of time may still be unreasonable: *Andrea v Selfridge & Co Ltd*.

Sensitivity of plaintiff

Test is objective: *Bamford v Turley* unusual sensitivity of the plaintiff cannot be taken into account: *Hollywood Silver Fox Farm v Emmet*.

Malice of defendant

Ordinary activities done maliciously for the purpose of causing stress and annoyance is an exception to the give and take rule: *Bamford v Turley*

Give and take rule

whereby they can go about their ordinary domestic business (babies crying, sounds of sex, sounds from televisions, etc) without giving rise to an action: *Southwark London Borough Council v Tanne* **Note: plaintiff is not expected to change ordinary ways of life to avoid nuisance: *Lester-Travers v City of Frankston***