

Nuisance- Exam Notes

A substantial and unreasonable interference by the defendant with the plaintiff's enjoyment or use of their land.

- Conduct indirectly causing:
 - Unlawful interference with someone's interests in land:
 - Physical (*Challen*) or enjoyment damage (domestic use, agricultural or commercial use, not highly sensitive uses)
 - Invasion is usually indirect or intangible (flowing from outside P's land)
- 2. Which is, in light of all the prevailing circumstances, unreasonable

Process:

- Title to sue?
 - Law in Aus. is not settled
 - Requires legal interest in the land subject to the nuisance
 - *Deasy Investments* (1996, QCA)- licensees can sue (*ratio*)
 - *Stockwell v Victoria* (2001, VSC)- licensees cannot sue (*obiter*)
 - *Hunter v Canary Wharf & Stockwell*- reaffirmed the traditional rule that ownership is a requirement of title to sue
 - If uncertain, consider the merit of P's claim
- Nuisance complained of: tangible interference (yes): fire, flood, dust, golf balls, intangible interference (yes): noise, smells, viewing of land (no): *Victoria Park Racing v Taylor* (1937), observation (yes, if repeated): *Bernstein v Skyviews*, view from land (no, unless offensive): *Thompson-Schwab v Costaki*, harassment (yes): *Khorasandjian v Bush*, television reception (no): *Hunter v Canary Wharf*, damage to chattels (yes): *Challen*, *Halsey v Esso Petroleum*, *Stockwell*, offensive message (no): *Broderick Motors Pty Ltd v Roth*
- Substantial (question of degree): permanent or temporary, continuous or intermittent, time of day, effect on P, did P complain?, frequency, geographic proximity
- Unreasonable:
 - Domestic user rule- *Clarey v Women's College* (students) & *Southwark LBC v Mills* (inadequate soundproofing from daily activities)
 - Locality- *Munro v Southern Dairies* (discomfort or inconvenience characteristic of neighbourhood?)
 - Public interest in activity creating nuisance is irrelevant- *Pennington* (job loss as a result of injunction on nuisance) & *Munro*
 - Sensitive P/land- nuisance does not protect special extra-sensitive use requiring a greater degree of protection than the general community expects
 - *Robinson v Kilvert* (1989) 41 Ch D 88
 - P had a stock of manufactured brown paper that was destroyed by the heat from the defendant's pipe
 - Not recoverable (sensitivity of the paper too great & not interfering with enjoyment of apartment)

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- *McKinnon Industries v Walker* [1951] 3 DLR 577
 - Poisonous chemical fumes caused damage to P's highly sensitive orchids
 - Fumes damaged other, more sturdier plants (would have been a nuisance despite orchids)
- Was D acting w/ malice?- malice may turn something trivial into a nuisance
 - *Hollywood Silver Fox Farm Ltd v Emmett*
 - D acted to disrupt breeding of foxes
 - Shooting would have been trivial in farm lands had it not been for malicious intent
- Who is liable?
 - Authorising nuisance
 - *Challen*- if an occupier of land permits a nuisance to be conducted on its land of which it knows or ought to know, it becomes liable for that nuisance and its potentially harmful consequences
 - *De Jager v Payne. & Magill Ledges Hall*- an occupier of premises who hires the premises out for a particular purpose, which involves a *special danger of nuisance*, is liable for any nuisance caused by the hirer in carrying out that purpose
 - Trespasser/Employee/I.C.- occupier may be liable for nuisance caused by a trespasser if they (*Stockwell*):
 - Knew or ought to have known of nuisance
 - Foreseeable that damage could occur
 - Failed to comply with DoC to abate nuisance

Defences:

- Prescription- >20 years of continued nuisance
- Consent/conduct of P- needs to be explicit, not a defence to say P came to nuisance (*Challen*)
- Statutory Authority- must be express, must be authorisation of use of land that will inevitably cause nuisance, if D left with discretion D will be liable unless practically impossible to avoid nuisance

Remedies:

- Injunction- common for P to seek injunction prevent D from continuing the activity creating the nuisance (Court may refuse, instead opting for damages if adequate to address the nuisance)
 - If nuisance extinguished, no need to order an injunction
- Damages- no need for P to have suffered financial loss
 - Loss of enjoyment/use of land compensable by award of general damages
 - Property damage/loss of value of land also compensable
 - Principles of remoteness apply
 - Exemplary damages- can be awarded if evidence of contemptuous disregard of P's rights (*Commonwealth v Murray*)
- Abatement- summary removal or nuisance affected without recourse to legal proceedings
 - Self-help remedy instead of an injunction

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- Abater must not commit unnecessary damage, must give notice (except where entry onto land is not required), abater must be someone with standing to sue, also operates as a defence to trespass to land