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Private Nuisance

Elements

1	Does the plaintiff have title to sue?
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3	Can the defendant be sued? Did the defendant create, authorise, adopt or continue the nuisance?

Element 1: What is required for a person to have title to sue?

- The plaintiff must have the right to exclusive possession or actual exclusive possession.

Oldham v Lawson (No 1) [1976] VR 654

- Wife owned the house so the husband was a mere licensee. **Held:** only the wife could sue in nuisance.

- Exception: damage is of sufficiently permanent character.

Element 2: Is there interference with the enjoyment of land? Is the interference tangible or intangible?

Tangible and intangible interference

Interference		Tests
Tangible	Indirect physical injury to property such as: fire, tree roots, flood, and dust.	• Indirect physical injury • Not trivial • Locality doesn't matter
Intangible	Aka 'sensible personal discomfort' e.g: noise, smell, and offensive sights.	• Damage is substantial and unreasonable • Locality matters

Interests protected

Protected	• Easements • Right to support the land • Right to leave and enter land
Not protected	• Natural light • Views • One looking into another's property (<i>Victoria Park Racing</i> but cf <i>Fearn v Tate Gallery</i> in the UK)

How do courts approach the assessment of whether interference is substantial or unreasonable?

- Against the standard of the ordinary person “not merely according to elegant or dainty modes and habits of living” (*Walter v Selfe*) and can't be abnormally sensitive (*Clarey v Women's College*).

<i>Munro v Southern Dairies</i> [1955] VLR 332	
Significance	The interference must be ‘material’ or ‘substantial’ to constitute a nuisance.
Material facts	• The plaintiff claimed that his quiet enjoyment of his premises has been interfered with by the noise, smell and flies from the horses kept on the defendant's property. • The plaintiff sued the defendant for an injunction and/or damages.
Legal reasoning	Sholl • The interference was substantial and unreasonable. ○ Locality – retail milk required horses and was common in the neighbourhood, however, it was suggested that horses would not be needed in the future. ○ Plaintiff's sensitivity – P was not abnormally sensitive.

	○ Public utility – Not enough to negative nuisance. ○ Use of premises to accepted standards – not enough to negative nuisance.
Outcome	Judgment for the plaintiff

<i>Hollywood Silver Fox Farm v Emmett</i> [1936] 2 KB 468	
Significance	Noise can constitute a private nuisance if it is excessive and unreasonable.
Material facts	• The plaintiff bred silver foxes on land adjoining that of the defendant. • The plaintiff erected a prominent advertising sign which the defendant requested be removed because he feared it would be detrimental to his building estate. • When the plaintiff refused to remove it, the defendant shot guns on his own land as near as possible to the breeding pens. • The sound greatly alarmed the vixens, thereby reducing the number of cubs reared.
Legal reasoning	Macnaghten J • Noise can be considered excessive and unreasonable if the purpose is to 'vex or annoy the plaintiffs of the occupiers...' • Citing <i>Gaunt v Fynney</i> (1872) (Lord Selborne): 'If what has taken place had occurred between two sets of persons both perfectly innocent, I should have taken an entirely different view of the case. But I am persuaded that what was done by the defendant was done only for the purpose of annoyance, and in my opinion it was not a legitimate use of the defendant's house to use it for the purpose of vexing and annoying his neighbours.' • Citing <i>Allen v Flood</i> (Lord Watson): 'No proprietor has the 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.'