

LLB102 Torts End of Semester Exam Notes

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Private Nuisance

- Private Nuisance is an unlawful interference with a person's use or enjoyment of land which they have a right or connection with; *Hargrave v Goldman*.

Elements:

1) Title to sue

- The plaintiff must have a legally recognised interest with the land; *Hunter v Canary Wharf*.

2) Interference with a Legally Recognised Right

- Right to support land, right to access land, right to use and enjoy the land free from excessive noise, smells or vibrations; *Munro v Southern Dairies Ltd*.

3) Damage

- Interference may result in material damage to plaintiff's land or property, or a substantial and unreasonable interference with right attached to land (or both); *Munro v Southern Dairies Ltd*.

Material Damage

- Misfeasance: Positive Act
 - Defendant always liable
 - No need to prove that no reasonable care was taken
- Non-feasance: Failure to Act
 - Defendant liable if at fault in failure to take reasonable care
- Causation
 - Nuisance must cause the damage
 - Damage must be a foreseeable consequence of the nuisance

Interference with Use and Enjoyment

- Substantial
 - Inconvenience isn't trifling or small; *Munro v Southern Dairies Ltd*
 - Plaintiff to prove
- Unreasonable
 - Objective test using principle of 'give and take'; *Banford v Turnley*
- Tests:
 - 1) Locality; *Munro v Southern Dairies Ltd*
 - 2) Nature of the Activities; *Munro v Southern Dairies Ltd*
 - 3) Time and Duration; *McKenzie v Powley*
 - 4) Availability of Alternative Means; *Munro v Southern Dairies*
 - 5) Defendant's Motive; *Hollywood Silver Fox Farm v Emmett*
- Causation
 - Nuisance must cause the damage
 - Damage must be a foreseeable consequence of the nuisance

Defences:

1) Plaintiff's Abnormal Sensitivity

- The interference wouldn't be a nuisance to a reasonable person; *Hollywood Silver Fox Farms v Emmett*

2) Statutory Authority

- Defendant authorised by statute with the clear intention to take away the right to use in nuisance; *Allen v Gulf Oil Ltd*
- All reasonable care was taken and nuisance was unable to be prevented; *York v Commissioner For Main Roads*

3) Contributory Negligence

- Plaintiff contributed to the nuisance
- Reduces damages

4) Consent

- Plaintiff gave express consent
- Consent not given under duress, obtained by fraud and plaintiff in the capacity to give consent

5) Necessity

- Threat of imminent harm
- Harm not caused by the defendant

Remedies

1) Abatement

- Self help

2) Damages

- Compensatory for material damage= cost of restoration or the decrease in value of land (whatever is less)
- Compensation for use/enjoyment= look at previous decisions
- Compensatory for personal injury; *Penning v Wang*

3) Injunction

- For continuing nuisances
- Damages are inadequate

Vicarious Liability

- An employer will be held vicariously liable for the wrongful acts of an employee carried out during the course of employment; *Hollis v Vabu Pty Ltd*

Must Establish:

1) Tortfeasor is an employee

- Employee and not an independent contractor
- The totality of the relationship must be considered; *Hollis v Vabu Pty Ltd*

Uses Multi-Facet Test:

- Control
 - Mode of Remuneration
 - Provision and Maintenance of Equipment
 - Obligation to work exclusively
 - Hours of Work
 - Provision of Holiday
 - Deduction of Income Tax
 - Right to Delegate work and sub-contract the work
- Loaning out employees= original employer is liable unless services and control is transferred for particular purposes; *Deutz Australia Pty Ltd v Skilled Engineering* (Original employer bears onus of proof)

2) Tortious Act

- A tort must occur

3) Tort Done in the Course of Employment

- Question of fact
- Scope of employment
- If the employer authorises the act= within course of employment; *NSW v Lepore*

Wrongful Mode

- Act is within the course of employment but is done in the wrong way= In the course of employment; *Bugge v Brown*

Express Prohibition

- Assess whether prohibition limits the scope of employment or merely regulates conduct (the former is not in the course of employment); *Bugge v Brown* or *Rose v Plenty*

Frolic

- Employee does something in furtherance of own interests= not in course of employment; *Jack v Morison*

Intentional Tort

- Independent personal act= not in course of employment; *Deatons Pty Ltd v Flew*
- Sexual abuse= not in the course of employment; *NSW v Lepore*