Nuisance

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Author(s)

Maureen O'Brien - Thomson Reuters

The tort of nuisance was developed by the common law to protect occupiers of land against an unlawful interference with the use or enjoyment of that land. There are two main categories: public and private nuisance.

The "rule in Rylands v Fletcher" is a sub-species of the tort of nuisance.

Overview of Topic

1. Public nuisance covers a number of interferences with rights of the public at large, such as environmental issues and planning violations. The common law of public nuisance has to a large extent been replaced by statutory obligations imposed on individuals and public authorities as, for example, the Environmental Protection Act 1990, the Water Industry Act 1991, the Clean Air Act 1993 and the Noise Act 1996 in relation to complaints arising out of environmental pollution and the Planning Act 2008 in relation to planning decisions which adversely affect the rights of occupiers. This is not an exhaustive list of statutes which create an offence of public nuisance.

2. An act of public nuisance is a crime as well as a tort and becomes actionable in tort only if an individual can prove that he has suffered special damage as a result of the defendant's actions, as opposed to the common injury suffered by the public at large. By definition, public nuisance is designed to protect public interests unlike private nuisance which protects individual interests in land.

3. Private nuisance arises where there is an unlawful interference by one occupier of land with a person's use or enjoyment of land, or some right over, or in connection with it. Unlike public nuisance, it is not a crime but merely a tort actionable at law in certain circumstances. Damages for personal injuries are not recoverable in an action alleging private nuisance because the only harm recognised in private nuisance is interference with an occupier's use or enjoyment of land.

4. As with public nuisance, statutory control has regulated duties between neighbours to a large extent. For example, the refusal of planning permission may prevent one occupier of land from interfering with the rights of his neighbour, e.g. the right to light. In some circumstances the tort of nuisance may also amount to harassment and so be covered by the Protection from Harassment Act 1997.

5. The rule in Rylands v Fletcher is a sub-species or offshoot of the tort of nuisance. The rule in Rylands v Fletcher is, basically, that a:

> "person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape"

per Blackburn J. (1866) L.R. 1 Ex. 265 at 279-280. This is a strict liability tort, i.e. no proof of negligence by the defendant is required.

Key Acts

Fire Prevention (Metropolis) Act 1774 s.28

Control of Pollution Act 1974

Environmental Protection Act 1990

Water Industry Act 1991

Clean Air Act 1993

Protection from Harassment Act 1997

Human Rights Act 1998

Anti-social Behaviour Act 2003

Planning Act 2008 ss.152 and 158

Key Subordinate Legislation

None.

Key Quasi-legislation

None.

Key European Union Legislation

Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage

Key Cases

Bamford v Turnley 122 E.R. 25

Swaine v The Great Northern Railway Company 46 E.R. 899

St Helens Smelting Co v Tipping 11 E.R. 1483

Rylands v Fletcher (1868) L.R. 3 H.L. 330

Rylands v Fletcher (1865-66) L.R. 1 Ex. 265

Broder v Saillard (1875-76) L.R. 2 Ch. D. 692

Sturges v Bridgman (1879) 11 Ch. D. 852

Attorney General v Tod Heatley [1897] 1 Ch. 560

Malone v Laskey [1907] 2 K.B. 141

Musgrove v Pandelis [1919] 2 K.B. 43

Sedleigh-Denfield v O'Callagan (Trustees for St Joseph's Society for Foreign Missions) [1940] A.C. 880

Attorney General v PYA Quarries Ltd (No.1) [1957] 2 Q.B. 169

Davey v Harrow Corp [1958] 1 Q.B. 60

Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound) [1967] 1 A.C. 617

Mason v Levy Auto Parts of England Ltd [1967] 2 Q.B. 530

Goldman v Hargrave [1967] 1 A.C. 645

R. v Madden (Michael John) [1975] 1 W.L.R. 1379

Motherwell v Motherwell (1976) 73 D.L.R. (3d) 62

Leakey v National Trust for Places of Historic Interest or Natural Beauty [1980] Q.B. 485

Kennaway v Thompson [1981] Q.B. 88

Allen v Gulf Oil Refining Ltd [1981] A.C. 1001

Stoke on Trent City Council v B&Q (Retail) Ltd [1984] A.C. 754

Soering v United Kingdom (A/161) (1989) 11 E.H.R.R. 439

City of London Corp v Bovis Construction Ltd [1992] 3 All E.R. 697

Khorasandjian v Bush [1993] Q.B. 727

Cambridge Water Co Ltd v Eastern Counties Leather Plc [1994] 2 A.C. 264

Crown River Cruises Ltd v Kimbolton Fireworks Ltd [1996] 2 Lloyd's Rep. 533

Hunter v Canary Wharf Ltd [1996] 2 W.L.R. 348

Hunter v Canary Wharf Ltd [1997] A.C. 655

Attorney General v Gastonia Coaches [1977] R.T.R. 219

Holbeck Hall Hotel Ltd v Scarborough BC [2000] Q.B. 836

Southwark LBC v Mills [2001] 1 A.C. 1

Delaware Mansions Ltd v Westminster City Council [2001] UKHL 55; [2002] 1 A.C. 321

Transco Plc v Stockport MBC [2003] UKHL 61; [2004] 2 A.C. 1

Marcic v Thames Water Utilities Ltd [2003] UKHL 66; [2004] 2 A.C. 42

Connors v United Kingdom (66746/01) (2005) 40 E.H.R.R. 9

Network Rail Infrastructure Ltd v Morris (t/a Soundstar Studio) [2004] EWCA Civ 172; [2004] Env. L.R. 41

Lough v First Secretary of State [2004] EWCA Civ 905; [2004] 1 W.L.R. 2557

R. v Rimmington (Anthony) [2005] UKHL 63; [2006] 1 A.C. 459

Hiscox Syndicates Ltd v Pinnacle Ltd [2008] EWHC 145 (Ch); [2008] 5 E.G. 166 (C.S.)

Macnab v Richardson [2008] EWCA Civ 1631; [2009] 3 E.G.L.R. 1

Colour Quest Ltd v Total Downstream UK Plc [2009] EWHC 540 (Comm); [2009] 2 Lloyd's Rep. 1

Corby Group Litigation v Corby DC [2009] EWHC 1944 (TCC); [2009] N.P.C. 100

R. (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court [2009] EWHC 1996 (Admin); [2010] A.C.D. 12

DPP v Fearon [2010] EWHC 340 (Admin); [2010] 2 Cr. App. R. 22

Lambert v Barratt Homes Ltd [2010] EWCA Civ 681; [2010] B.L.R. 527

R. v Dallinger (Eric Charles) [2012] EWCA Crim 1284; [2013] 1 Cr. App. R. (S.) 38

R. v Osker (Donna) [2010] EWCA Crim 955; [2010] M.H.L.R. 115

Barr v Biffa Waste Services Ltd [2012] EWCA Civ 312; [2012] 3 W.L.R. 795

Dobson v Thames Water Utilities Ltd [2011] EWHC 3253 (TCC); 140 Con. L.R. 135

Coventry (t/a RDC Promotions) v Lawrence [2012] EWCA Civ 26; [2012] 1 W.L.R. 2127

Stannard (t/a Wyvern Tyres) v Gore [2012] EWCA Civ 1248; [2013] 1 All E.R. 694

Jerrett v Walker

Thomas v Merthyr Tydfil Car Auction Ltd [2013] EWCA Civ 815; 149 Con. L.R. 105

Vernon Knight Associates v Cornwall Council [2013] EWCA Civ 950

Key Texts

Clerk & Lindsell on Torts 20th Ed. Ch.20

Winfield & Jolowicz, Tort

Discussion of Detail

PUBLIC NUISANCE

Definition

1. Denning L.J. in Attorney General v PYA Quarries Ltd (No.1) [1957] 2 Q.B. 169 stated:

> "...a public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large."

2. Public nuisance is a crime and criminal proceedings are brought by the DPP. Civil

proceedings in tort are usually brought by the Attorney General. However, s.222 of the Local Government Act 1972 confers on local authorities the procedural power, in the public interest, to seek injunctions, which had previously been vested only in the Attorney General at common law: Stoke on Trent City Council v B&Q (Retail) Ltd [1984] A.C. 754.

3. See also City of London Corp v Bovis Construction Ltd [1992] 3 All E.R. 697, in which the Court of Appeal held that where the evidence suggests that criminal proceedings alone are insufficient to protect the aggrieved party's interests, an injunction in civil proceedings may properly be granted. In that case the local authority sought and obtained an injunction restraining building works which were the subject of a notice served on the defendant pursuant to s.60 of the Control of Pollution Act 1974.

Claims by individuals

1. For individuals to bring a claim in public nuisance, they must prove that they have suffered special damage over and above the common injury suffered by the public at large. Importantly, and unlike the requirement in private nuisance, there is no requirement for a claimant to have a proprietary interest in the land affected by the unlawful interference: see Colour Quest Ltd v Total Downstream UK Plc [2009] EWHC 540 (Comm); [2009] 2 Lloyd's Rep. 1, where it was held that whilst public nuisance embraced claims of those who complained of an interference with their use and enjoyment of land it was not confined to such claims. There was no requirement for a claimant to have a proprietary interest although that might be relevant to the issue whether the claimant's damage was special in the sense of being particular, direct and substantial.

Proving common law public nuisance

1. For a public nuisance to be established, the prosecution must prove that the acts complained of affected a considerable number of persons or a section of the public and actual rather than potential danger or risk must be proved. In R. v Madden (Michael John) [1975] 1 W.L.R. 1379, the defendant made a 999 telephone call alleging that a large bomb had been placed in a local steel works, clearly intending the message to be acted upon. The telephonist informed the police and the telephone engineer in order that the call might be traced; she took no other action. The police informed the security officer of the steel works, who then organised a search of the works by eight members of the security staff for about an hour until it became clear that the telephone call was a hoax. There was no evidence that anyone other than the telephone staff, security men and police were affected or took any action as a result of the hoax call. The defendant was convicted on indictment of committing a public nuisance after the recorder had directed the jury to consider whether the public were likely to be affected by such a call as distinct from whether they were in fact so affected.

2. Allowing the appeal against conviction, the Court of Appeal held that actual danger or risk to the comfort of the public was a necessary ingredient of the offence and accordingly the jury were misdirected. In addition, there was no evidence that the public had been so affected.

3. Central to the concept of public nuisance is common injury to members of the public, and an individual single act could not fulfil the requirement of endangering the comfort of the public as a whole and obstructing the exercise or enjoyment of their rights. For example, a single act of soliciting a woman for prostitution within a recognised vice area by a male on foot could not amount to the common law offence of public nuisance: DPP v Fearon [2010] EWHC 340 (Admin); [2010] 2 Cr. App. R. 22. But see R. (on the application of Hope & Glory

Public House Ltd) v City of Westminster Magistrates' Court [2009] EWHC 1996 (Admin); [2010] A.C.D. 12 where it was held that a public nuisance did not need to be very indiscriminate or widespread to amount to a public nuisance; it simply needed to be sufficiently widespread and sufficiently indiscriminate to amount to more than a private nuisance.

Examples of common law public nuisance

1. Causing considerable disruption and cost by threatening to jump from a motorway bridge: R. v Dallinger (Eric Charles) [2012] EWCA Crim 1284; [2013] 1 Cr. App. R. (S.) 38. The motorway had to be closed which led to a serious build up of traffic and significant disruption. The estimated cost was more than £1 million. See also: R. v Osker (Donna) [2010] EWCA Crim 955; [2010] M.H.L.R. 115 where the defendant pleaded guilty to one count of public nuisance by causing a multi-storey car park and surrounding area to be vacated when she stood on a ledge at the top of the car park cutting herself with a razor blade and threatening to "end it all".

2. Causing, allowing or permitting the dispersal of dangerous or noxious contaminants: Corby Group Litigation v Corby DC [2009] EWHC 1944 (TCC); [2009] N.P.C. 100.

3. Obstructing the highway: Attorney General v Gastonia Coaches [1977] R.T.R. 219.

4. Allowing a piece of land to be and to remain in such a state as to be a nuisance or injurious to health: Attorney General v Tod Heatley [1897] 1 Ch. 560. Dead dogs and cats, vegetable refuse, fish, offal, rubbish, and all kinds of filth thrown or deposited upon vacant ground belonging to the respondent constituted a continuing nuisance injurious to the health of the inhabitants of the parish.

5. It goes without saying that the above list is not exhaustive.

Statutory exemptions

1. If a statute authorises the defendant's activities, he will not, without more, be liable. See Allen v Gulf Oil Refining Ltd [1981] A.C. 1001 and Marcic v Thames Water Utilities Ltd [2003] UKHL 66; [2004] 2 A.C. 42.

2. However, if compliance with a statutory permit is pleaded as a defence, it is for a defendant to prove compliance. The common law of nuisance has co-existed with statutory controls since the nineteenth century and short of express or implied statutory authority to commit a nuisance, there is no basis, in principle or authority, for using a statutory scheme to cut down private law rights: Barr v Biffa Waste Services Ltd [2012] EWCA Civ 312; [2012] 3 W.L.R. 795.

PRIVATE NUISANCE

Definition

1. Private nuisance was defined in Bamford v Turnley 122 E.R. 25 as:

> "any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant's] land or his use or enjoyment of that land."

A balance has to be maintained between the right of the occupier to do what he likes with his own, and the right of his neighbour not to be interfered with: Sedleigh-Denfield v O'Callagan (Trustees for St Joseph's Society for Foreign Missions) [1940] A.C. 880. The reasonableness or otherwise of the defendant's use of his land is central to establishing liability in an action for private nuisance. Not every annoyance will be a nuisance. The law does not regard trifling inconveniences; everything is to be looked at from a reasonable point of view: Sturges v Bridgman (1879) 11 Ch. D. 852.

2. Private nuisances are of three kinds:

a. Nuisance by encroachment on a neighbour's land;

b. Nuisance by direct physical injury to a neighbour's land; and

c. Nuisance by interference with a neighbour's quiet enjoyment of his land.

Who can bring an action in private nuisance?

1. The plaintiff must hold a property interest in land in order to sue in private nuisance. A person who has no interest in property, nor right of occupation in his or her own right, cannot maintain an action for a nuisance: Malone v Laskey [1907] 2 K.B. 141.

2. At one time it seemed that the Court of Appeal wished to move away from such a strict requirement. In Khorasandjian v Bush [1993] Q.B. 727 it was held that, notwithstanding Malone, a child of the owner of the property had the right to restrain harassing telephone calls to the house. Dillon L.J. cited Clement J.A. in a decision of the Appellate Division of the Alberta Supreme Court in Motherwell v Motherwell (1976) 73 D.L.R. (3d) 62 who stated he found it "absurd to say that [a wife's] occupancy of the matrimonial home is insufficient to found an action in nuisance" (at p.78).

3. In Khorasandjian Dillon L.J. respectfully agreed and considered that if:

> "the wife of the owner is entitled to sue in respect of harassing telephone calls, then I do not see why that should not also apply to a child living at home with her parents."

4. Further, in Hunter v Canary Wharf Ltd [1996] 2 W.L.R. 348, Pill L.J. held (overruling the judge at first instance):

> "A substantial link between the person enjoying the use and the land on which he or she is enjoying it is essential but, in my judgment, occupation of property, as a home, does

confer upon the occupant a capacity to sue in private nuisance."

5. However, the House of Lords firmly rejected this approach in Hunter v Canary Wharf Ltd [1997] A.C. 655 and overruled Khorasandjian in so far as it decided that a mere licensee could sue in private nuisance.

Who can be sued?

1. The creator of the nuisance may be sued. It is not necessary for him/her to have any interest in the land from which the nuisance flows.

2. The occupier, who is also liable for the acts of persons under his control, including independent contractors.

3. A landlord may be liable for a nuisance in certain circumstances:

   a. where he authorised the nuisance;

   b. where the nuisance existed before the lease was entered into; and

   c. where the landlord has an obligation or a right of repair. See Southwark LBC v Mills [2001] 1 A.C. 1, for detailed discussion of a landlord's liability in nuisance.

Foreseeability of damage

1. In a case of nuisance, as of negligence, it is not sufficient that the damage was the direct result of the nuisance if that injury was not foreseeable: Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound) [1967] 1 A.C. 617. The engineers of the Wagon Mound were careless in taking furnace oil aboard in Sydney Harbour. Much oil escaped onto the water, drifted some distance to a wharf where it was accidentally ignited by someone else, and caused damage to the plaintiff's vessels. The engineers would have regarded this as a possibility, but one which would become an actuality only in very exceptional circumstances. However, it was held that on the evidence the engineers must have foreseen some injury, and the Wagon Mound's owners were liable in both negligence and nuisance.

Damage to property

1. Property damage in nuisance can arise:

   a. by encroachment on a neighbour's land; or

b. by direct physical injury to a neighbour's land.

2. In cases involving encroachment, the law will presume damage. However, in cases involving direct physical injury to neighbouring land, actual and not potential damage is essential to found a claim in nuisance. See Sedleigh-Denfield v O'Callagan (Trustees for St Joseph's Society for Foreign Missions) [1940] A.C. 880.

3. Examples of how property damage can occur as a result of nuisance include:

- The occupier of a house was liable for allowing the continuance on his premises of an artificial mound of earth which caused a nuisance to a neighbour, even though it had been put there before he took possession: Broder v Saillard (1875-76) L.R. 2 Ch. D. 692.

- Where an owner of land for his own convenience diverts or interferes with the course of a stream he will prima facie be liable if an overflow should take place and damage his neighbour's land: Sedleigh-Denfield v O'Callagan (Trustees for St Joseph's Society for Foreign Missions) [1940] A.C. 880.

- If trees encroach, whether by branches or roots, and cause damage, an action for nuisance will lie: Davey v Harrow Corp [1958] 1 Q.B. 60. See also Delaware Mansions Ltd v Westminster City Council [2001] UKHL 55; [2002] 1 A.C. 321 where it was held that an action will lie despite the fact that the damage occurred before the claimant freeholder acquired the freehold.

- A landowner who knows or ought to know of the potential danger to neighbours caused by natural deterioration of his property is liable in nuisance if he fails to take reasonable steps to avert such a danger: Leakey v National Trust for Places of Historic Interest or Natural Beauty [1980] Q.B. 485.

- If a landowner knows or ought to know that their property may cease to support another's, they are required to take reasonable precautions or they will be liable: Holbeck Hall Hotel Ltd v Scarborough BC [2000] Q.B. 836.

- Excess vibration caused by the defendant's demolition works: Hiscox Syndicates Ltd v Pinnacle Ltd [2008] EWHC 145 (Ch); [2008] 5 E.G. 166 (C.S.).

- A local authority was found liable for flood damage caused to a property when drains it had installed in a road, known to be a high flood risk, had become blocked: Vernon Knight Associates v Cornwall Council [2013] EWCA Civ 950. But see Lambert v Barratt Homes Ltd [2010] EWCA Civ 681; [2010] B.L.R. 527where it was held that it was not fair, just or reasonable to impose on a local authority a duty to carry out and pay for relief work to an existing drainage system which had been blocked by a developer and caused water to accumulate on the local authority's land and subsequently damaged nearby properties.

Abatement

1. Abatement is a form of self-help, where the person whose land is being encroached upon directly ends the nuisance, for example in cutting down overhanging branches, etc. The courts rarely approve, especially if it requires the claimant to trespass on the defendant's land. See Macnab v Richardson [2008] EWCA Civ 1631; [2009] 3 E.G.L.R. 1 where it was held that the marginal encroachment of a fence due to seasonal variation, across a boundary between two properties, did not justify the exercise of the remedy of self-help by the removal of the fence. Its removal constituted an act of trespass entitling the fence owner to damages.

Nuisance by interference with a neighbour's quiet enjoyment of his land

1. The damage arising out of this type of nuisance is sometimes referred to as "amenity damage". Not every annoyance will be a nuisance. The law does not regard trifling inconveniences; everything is to be looked at from a reasonable point of view: Sturges v Bridgman (1879) 11 Ch. D. 852.

2. When considering nuisance where there is no physical damage to the claimant's property but the nature of the offence is such as to cause him discomfort by means of, for example, noise, smells, dust or other interference with the use and enjoyment of his land, the courts will take into consideration such things as the character of the neighbourhood, the duration of the interference, whether the defendant has acted with malice and such other considerations as, for example, the claimant's abnormal sensitivity to the disturbance or whether the defendant has acted in the public good, although this is not, per se, a defence.

Character of the neighbourhood

1. There is a distinction between an action for a nuisance in respect of an act producing a material injury to property, and one brought in respect of an act producing personal discomfort. As to the latter a person must, in the interest of the public generally, submit to the discomfort of the circumstances of the place, and the trades carried on around him: St Helens Smelting Co v Tipping 11 E.R. 1483.

2. In the typically robust language of the 19th century, "What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey": Sturges v Bridgman (1879) 11 Ch. D. 852.

3. Planning permission can have the effect of altering the character of the neighbourhood: Gillingham BC v Medway (Chatham Docks) Co Ltd [1993] Q.B. 343. See also Coventry (t/a RDC Promotions) v Lawrence [2012] EWCA Civ 26; [2012] 1 W.L.R. 2127 where it was held that a planning authority, by the grant of planning permission, could not authorise the commission of a nuisance. Nevertheless, the grant of planning permission followed by the implementation of such permission might change the character of a locality. It was a question of fact in every case whether the grant of planning permission followed by steps to implement such permission had the effect of changing the character of the locality. If the character of a locality was changed as a consequence of planning permission having been granted and implemented, then the question of whether particular activities in that locality constituted a nuisance had to be decided against the background of its changed character; one consequence might be that otherwise offensive activities in that locality ceased to be a nuisance. See also: Thomas v Merthyr Tydfil Car Auction Ltd [2013] EWCA Civ 815; 149 Con. L.R. 105.

Abnormal sensitivity

1. Where a person or property is abnormally sensitive to the injury inflicted, then provided the defendant's conduct was reasonable, the claimant will be unlikely to establish liability in nuisance.

2. However, in Network Rail Infrastructure Ltd v Morris (t/a Soundstar Studio) [2004] EWCA Civ 172; [2004] Env. L.R. 41 it was held that the concept of abnormal sensitivity was outmoded. To establish liability for private nuisance, the test was not that of foreseeability alone, but of foreseeability as an aspect of reasonableness. The test was whether it was foreseeable that specific damage would be caused to a specific claimant, a requirement that subsumed both duty in fact and remoteness of damages and was applied with the same generality as in negligence cases.

Duration of interference

1. Where there is nuisance but it is temporary or occasional, no action will lie against the perpetrator of the nuisance: Swaine v The Great Northern Railway Company 46 E.R. 899.

2. However, a temporary nuisance which is substantial will be an actionable nuisance: Crown River Cruises Ltd v Kimbolton Fireworks Ltd [1996] 2 Lloyd's Rep. 533.

Nature of defendant's conduct

1. The presence of malice or an intention to annoy on the part of the defendant can turn an act that would otherwise not be actionable into an actionable nuisance. See Christie v Davey [1893] 1 Ch. 316 and Hollywood Silver Fox Farm Ltd v Emmett [1936] 2 K.B. 468.

Public good

1. It is no defence to say that the activity complained of is a useful one or at least highly desirable in the public interest. In Kennaway v Thompson [1981] Q.B. 88 it was held that the public interest in continuing an activity constituting a nuisance did not prevail over a private interest in obtaining an injunction curtailing such activity and such an injunction was granted.

2. However, there may be occasions where the public interest is held to outweigh private inconvenience, although in such circumstances, where the activity amounts to an actionable nuisance damages will usually be awarded in lieu of an injunction: Dennis v Ministry of Defence [2003] EWHC 793 (QB); [2003] Env. L.R. 34.

THE RULE IN RYLANDS V FLETCHER

Definition

1. The rule in Rylands v Fletcher (1868) L.R. 3 H.L. 330 is a sub-species or offshoot of the tort of nuisance. The rule in Rylands v Fletcher (1868) L.R. 3 H.L. 330 is, basically, that a:

> "person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape"

per Blackburn J. (1866) L.R. 1 Ex. 265 at 279-280. This is a strict liability tort, i.e. no proof of negligence by the defendant is required.

2. The rule in Rylands v Fletcher (1868) L.R. 3 H.L. 330 relates only to cases where there has been some special use of property bringing with it increased dangers to others, and does not extend to damage caused to adjoining owners as the result of the ordinary use of the land.

Natural use of land

1. In Cambridge Water Co Ltd v Eastern Counties Leather Plc [1994] 2 A.C. 264, the House of Lords held that the concept of natural or ordinary use of land had been unduly extended by courts anxious to restrict the rule in Rylands v Fletcher (1868) L.R. 3 H.L. 330. The House held that liability under the rule would be restricted by the need to establish foreseeability of harm of the relevant type, and so the courts would have no further need to extend the concept of natural use. It also confirmed that the rule is one of strict liability in the sense that the defendant may be held liable notwithstanding that he has exercised all due care to prevent the escape occurring.

2. In Transco Plc v Stockport MBC [2003] UKHL 61; [2004] 2 A.C. 1 Lord Bingham considered the nature of the "mischief" referred to by Blackburn J. in Rylands v Fletcher (1868) L.R. 3 H.L. 330. He stated:

> "I do not think the mischief or danger test should be at all easily satisfied. It must be shown that the defendant has done something which he recognised, or judged by the standards appropriate at the relevant place and time, he ought reasonably to have recognised, as giving rise to an exceptionally high risk of danger or mischief if there should be an escape, however unlikely an escape may have been thought to be."

3. As regards the "ordinary use" aspect of the rule, Lord Bingham stated:

> "... the question is whether the defendant has done something which he recognises, or ought to recognise, as being quite out of the ordinary in the place and at the time when he does it. In answering that question, I respectfully think that little help is gained (and unnecessary confusion perhaps caused) by considering whether the use is proper for the general benefit of the community."

4. An occupier of land who can show that another occupier of land has brought or kept on his land an exceptionally dangerous or mischievous thing in extraordinary or unusual circumstances is entitled to recover compensation from that occupier for any damage

caused to his property interest by the escape of that thing, subject to defences of Act of God or of a stranger, without the need to prove negligence: per Lord Bingham in Transco Plc v Stockport MBC [2003] UKHL 61; [2004] 2 A.C. 1.

5. The Transco case was concerned with an escape of water from a pipe belonging to the local authority which supplied a block of flats of which it was the owner. The escape of water caused the collapse of a nearby railway embankment which left a gas pipe belonging to Transco unsupported and at risk of damage. Transco claimed against the local authority the cost of remedial measures to protect the gas pipe. The House of Lords held that the piping of a water supply from the mains to storage tanks within a property was a routine function that would not ordinarily raise a hazard and was therefore an ordinary use of the land.

Escape of fire

1. At common law if a fire started in the house or on the land of one man and spread to the land of another, the person from whose house or land the fire started had to make good the damage. This was known as the rule of ignis suus.

2. This rule was modified by s.86 of the Fires Prevention (Metropolis) Act 1774 which provides, essentially, that if a fire is started accidentally on a person's property then prima facie that person will not be liable for any damage caused by the fire.

3. Notwithstanding the above, where there is some element of negligence in relation to the starting or continuation of a fire which causes damage to neighbouring property, the courts have held that the law of nuisance and, in some cases until recently, the rule in Rylands v Fletcher (1868) L.R. 3 H.L. 330 applies. See, for example, Musgrove v Pandelis [1919] 2 K.B. 43 approved in Goldman v Hargrave [1967] 1 A.C. 645. See also Jerrett v Walker, Unreported, 16 May 2013 QBD (TCC), where the claimant unsuccessfully brought proceedings against their neighbours in negligence and under the old common law rule of ignis suus after a spark from their wood burning stove had accidentally and unforeseeably been drawn up their chimney and caused the thatched roof to catch fire.

4. In Mason v Levy Auto Parts of England Ltd [1967] 2 Q.B. 530, applying Musgrove, it was held that since the defendants had brought into their yard combustible materials which were kept in such conditions that if they ignited the fire would be likely to spread to the plaintiff's land, and the defendants' use of the land was non natural, they were liable to the plaintiff in damages.

5. However, since the Court of Appeal ruling in Stannard (t/a Wyvern Tyres) v Gore [2012] EWCA Civ 1248; [2013] 1 All E.R. 694, it is probably safe to assume that a claim based on the rule in Rylands v Fletcher (1868) L.R. 3 H.L. 330 is unlikely to succeed where there has been an escape of fire. The judgments of Ward, Etherton and Lewison L.J.J. show the court's unease with the strict liability rule in Rylands being applied to the escape of fire.

Analysis

KEY AREAS OF COMPLEXITY OR UNCERTAINTY

1.

When considering the rule in Rylands v Fletcher (1868) L.R. 3 H.L. 330 the courts have found difficulty when considering the "natural", or "ordinary" or "reasonable" use of land. See, for example, Lord Bingham's speech in Transco Plc v Stockport MBC [2003] UKHL 61; [2004] 2 A.C. 1.

LATEST DEVELOPMENTS

1. Vernon Knight Associates v Cornwall Council [2013] EWCA Civ 950: A local authority had been liable for flood damage caused to a property when drains it had installed in a road, known to be a high flood risk, had become blocked. Although its system to prevent such blockages was adequate owing to action normally undertaken by a road maintenance contractor on his own initiative, for some reason he had not followed his normal practice on the occasions of the two floods in question, for which there was no adequate explanation.

POSSIBLE FUTURE DEVELOPMENTS

None.

HUMAN RIGHTS

Human rights and public nuisance

1. As regards criminal liability in public nuisance, in R. v Rimmington (Anthony) [2005] UKHL 63; [2006] 1 A.C. 459 the House of Lords held that the offence of public nuisance was clear, precise, adequately defined and based on a discernible rational principle, and was not therefore contrary to common law principles or incompatible with the Human Rights Act 1998 Sch.1 Pt I, para.1 Art.7 - No punishment without law.

Human rights and private nuisance

1. Article 8 of the European Convention on Human Rights provides:

   "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

   2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

   "

2. Therefore, in some instances, especially where a public body is involved, an action in private nuisance may also encompass a parallel action under the ECHR, particularly in relation to planning or environmental issues. However, while art.8 requires respect for the home, it creates no absolute right to amenities currently enjoyed. Its role though important

must be seen in the context of competing rights, including rights of other landowners and of the community as a whole: see Lough v First Secretary of State [2004] EWCA Civ 905; [2004] 1 W.L.R. 2557.

3. Inherent in the whole of the Convention is a search for fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's human rights: Soering v United Kingdom (A/161) (1989) 11 E.H.R.R. 439.

4. Where general social and economic policy considerations have arisen in the context of art.8 the scope of the authority's margin of appreciation to interfere with a citizen's home and family life depends on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant: Connors v United Kingdom (66746/01) (2005) 40 E.H.R.R. 9.

5. See also Dobson v Thames Water Utilities Ltd [2011] EWHC 3253 (TCC); 140 Con. L.R. 135 where it was held that an award of damages at common law to a property owner constituted just satisfaction under for the purposes of the Human Rights Act 1998 s.8(3) precluding additional compensation to those without proprietary interests.

EUROPEAN UNION ASPECTS

None.

Further Reading

None.