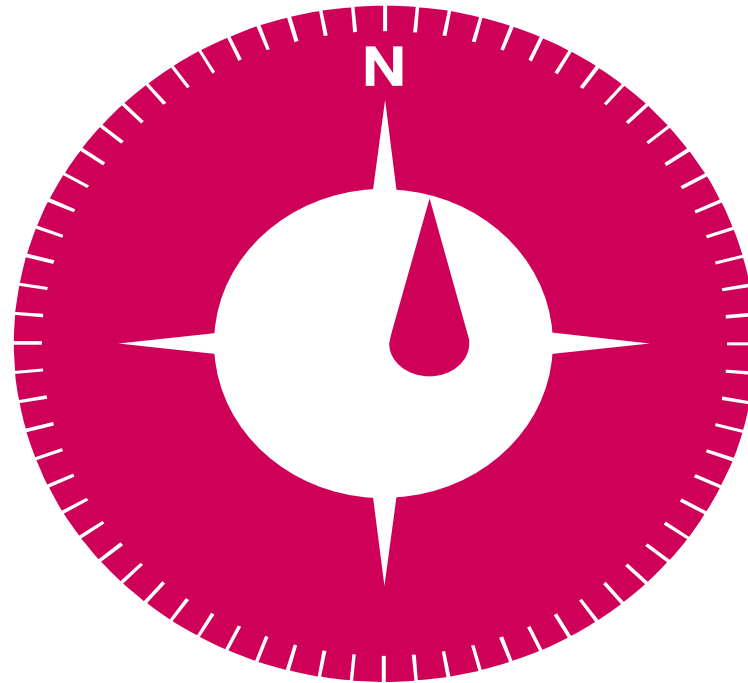




Nuisance – Principles and Practicalities

Go further



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Things to know before we start



Introduction



- **Who we are and what we do**
- **What are we going to talk about?**
 1. **Public Liability cover**
 2. **What is Nuisance?**
 3. **Public Nuisance**
 4. **Private Nuisance**
 5. **Range and common scenarios**
 6. **Remedies and Defences**
 7. **Practicalities**



Public Liability Policy Wording



Indemnity

The company will indemnify the insured against all sums the insured shall become legally liable to pay as damages and claimants costs and expenses arising out of accidental:

(a) injury to any person

(b) loss or damage to material property excluding information represented or stored electronically including but not limited to code or series of instructions, operating systems, software programs and firmware

(c) nuisance or trespass obstruction loss of amenities or interference with any right of way, light, air or water or other easement

(d) wrongful arrest, detention, imprisonment or eviction of any person or invasion of the right of privacy occurring within the territorial limits during the period of insurance and happening in connection with the business.

What is Nuisance?



- A tort allowing a claim to be brought in respect of acts which
 - damage or interfere with use and enjoyment of land; or
 - obstruct the public in the exercise and enjoyment of rights common to all.

➤ **Public**

➤ **Private**

➤ **Statutory**

Public Nuisance



- Protecting people, not property
- No need for an interest in land
- Acts endangering life, health, property, morals, comfort
- Obstructs the exercise or enjoyment of rights common to all
- Special Damage
- Statutory Nuisance – a modern replacement
- Environmental Protection Act 1990



Private Nuisance – who can claim?



- Interference with the use or enjoyment of land
- Need for **proprietary or possessory** interest
- Damage/injury caused in relation to that right
- Mere occupation not sufficient (*Hunter v Canary Wharf [2017]*)



Private Nuisance – who can be claimed against?



- **Occupier of the land**
 - even if the act carried out by others
- **Creator of the nuisance**
 - always potentially liable, whether or not they occupy the land from where nuisance originates
- **Absentee landlord**
 - Even after the property has been let



Occupiers



- Liable even where the act was carried out by others, and the occupier had **actual or constructive knowledge** and failed to take reasonable steps to abate the nuisance (*Cocking v Eacott [2016]*)
- Care to be taken when moving into a property if the creator has departed.
- A subsequent occupier can “adopt” the nuisance (*Sedleigh-Denfield v O'Callaghan [1940]*).
- Claimant side – with a continuing nuisance, can seek to recover losses even if loss began before acquisition of interest in the property (*Masters v Brent London Borough Council [1978]*)

Landlords – liability for tenant’s nuisance



- Established position – only occupier (i.e. the tenant) liable (*Rich v Basterfield (1847)*).
- Exception – participation in or authorisation of the nuisance (*Southwark London Borough Council v Mills [1999]*).
- *Coventry and others v Lawrence and another (No. 2) [2014] (Coventry v Lawrence No. 2)*
 - speedway facility, the activities of which amounted to a nuisance
 - Landlord had previously used the facility for motorsport, but had no further involvement, property interest and did not receive profits.
 - Held that a landlord will not be liable for a nuisance caused by its tenant except where the landlord authorises or directly participates in the tenant's nuisance.

Establishing Private Nuisance



- Typically occurs when a person is doing something on their own land, which they may be legally entitled to do, but which affects the land of their neighbour causing substantial or unreasonable interference or damage.
- How is it established?
 - Burden of proof – balance of probabilities.
 - Show the Defendant responsible for damage or interference.
 - No need to show they acted negligently.

Has a Nuisance occurred?



- Court will consider:
 - The **nature** of the Defendant's interference (e.g. was it intentional, negligent or reckless);
 - The **extent** of the interference – it must be substantial; and
 - The **reasonableness** of the Defendant's conduct

- **Reasonable Foreseeability** - (*Berent v Family Mosaic Housing and another [2012] EWCA Civ 961*)

Court Considerations



- Fact specific - turns on the court's assessment of the circumstances and relevant facts of each case as to what is “reasonable.”

- Factors:
 - Location – Belgrave Square v. Bermondsey (*Sturges v Bridgman [1879]*).
 - Time of occurrence
 - Duration
 - Frequency and intensity
 - A malicious act

Types of Nuisance – Physical Damage



➤ Flooding

- a “measured duty” to take reasonable steps to avoid damage to neighbouring properties.
- Vernon Knight Associates v Cornwall Council [2013] – a useful tour of the authorities
- Sedleigh-Denfield v O’Callaghan [1940] - liable for the escape of water which they could have prevented by taking a simple and obvious step.

➤ Encroaching tree roots

- Delaware Mansions v. Westminster City Council [2001] – remove the nuisance and claim back
- Berent v Family Mosaic Housing and another [2012]

Types of Nuisance - Interference



- **Noise and Vibration** - principles established in *Coventry and others v Lawrence and another [1975]*
- **Right to Light**
 - no general and inherent actionable right to light if blocked from your land.
 - Once the easement is acquired it is actionable, but there has to be a "*substantial*" deprivation of light to render occupation of the house uncomfortable (*Colls v. Home and Colonial Stores*).
- **Fumes, Dust and Smells** – largely captured under environmental legislation now.



Remedies – abatement, injunctions, damages



- **Injunction** – requiring the Defendant to abate the nuisance.
 - Mandatory
 - Prohibitory
 - Preventative (quia timet)
- **Abatement**
 - Defendant abating may end liability, Claimant may be able to abate and claim the cost.
- **Damages** – putting the Claimant in the position they would have been if the nuisance had not occurred.
 - normal quantum exercise where physical damage has occurred.
 - more difficult for interference cases – diminution of value of property.
 - Raymond and another v Young and another [2015] – belligerent neighbour affected sale value of a property. Damages were awarded for loss of capital value, not distress and inconvenience.

Defences



- **Reasonable user**
- **Prescription** – 20 years continuous exercise without objection.
- **Immunity granted by statute** – e.g. Civil Aviation Act
- **Limitation** – 6 years from accrual of the action



The rule in Rylands v. Fletcher



- Strict liability on a defendant for damage caused by their non-natural use of land.
- Cambridge Water Co v Eastern Counties Leather plc [1994] - the rule is:
"... that the person who for his own purposes brings on his land, 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..."

Policy and Practicalities



- Insurers see nuisance from both sides **(1)** a claim made against a policyholder under a PL policy by a third party **(2)** a recovery claim pursued following damage caused to a policyholder's property.
- Nuisance as a "tag-along" in a claim – a claim will be put forward in contract/negligence and/or in the alternative in nuisance.
- Advantages – potential strict liability cause of action, versatility, use the complexity to your advantage.
- Practical claim concerns – (1) urgency; (2) cost; (3) ongoing relationships; (4) cost of preventative measures ostensibly not indemnified (Yorkshire Water-v-SunAlliance); (5) injunctive relief not of itself sound in "damages" ... but..... abatement and control

Questions



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