

Question & Answer on the Tort of Nuisance

Andy bought a large yard in a quiet, rural area. He used the yard to keep and maintain coaches to provide transport for school children and day-trippers. Sam, who owned the house next to the yard, was annoyed by the persistent noise and diesel fumes resulting from the operation of the coaches. After three months, Sam complained to Andy, who responded by causing even more disturbance by noise and fumes. In addition, Andy's coaches were often parked in the narrow public road adjoining the yard, causing obstruction to motorists. Andy bought a large supply of diesel oil. He kept the oil in a tank in his yard. The tank was situated near Sam's garden. One night some of the oil leaked from the tank and caught fire. The fire immediately spread to Sam's garden and destroyed his fence and shed.

Advise Sam and the motorists of any legal action he may be able to take against Andy under the law of tort, applying your knowledge of legal rules and principles.

Your plan:

- **Private nuisance:** Sam may be able to bring a claim against Andy for private nuisance as we are told that "he was annoyed by the persistent noise and diesel fumes resulting from the operation of the coaches". Relevant factors include: duration and time of nuisance, character of the area, acts of malice, reasonable foreseeability of type of damage.
- Characteristics of private nuisance: Andy does have an interest in the land as he is the owner of the house next door, the character of the area is also quiet and rural
- **Public nuisance:** Definition as established in AG v PYA Quarries. "Andy's coaches were often parked in the narrow public road adjoining the yard, causing obstruction to motorists"- class of people affected are a local community - R v Ruffell
- **Rule in Rylands v Fletcher**
- Main remedies are damages and injunctions

Answer:

Private nuisance is an interference with a person's use and enjoyment of his land. Sam would be advised that he may be able to make a claim of private nuisance against Andy by interfering with the quiet enjoyment of his land, but firstly it has to be established whether Sam had an interest in the land being affected by the nuisance.

Sam must have an interest in the land affected by the nuisance in order to make a claim as seen in Hunter and Others v Canary Wharf. In Sam's case it is clear that he does have an interest in the land as seen in Foster v Warblington UDC as we are told that he "owned the house next to the yard". Sam would be advised that there must also be unreasonable use of the land which is the source of the nuisance. The time and duration of the nuisance can determine whether there has been unreasonable use of the land as seen in Halsey v Esso Petroleum Co and in Sam's case it is clear that the nuisance has been continuous as we are told that "he was annoyed by the persistent noise and diesel fumes" for more than three months showing that it was a regular occurrence.

In addition, the character of the area must also be considered as seen in Sturges v Bridgeman as we are told that "Andy bought a large yard in a quiet, rural area" showing that it would be very foreseeable that nuisance would be caused as there is "persistent noise and diesel fumes from the operation of coaches" which would clearly cause disturbance. Sam would also be advised that he could claim that he received disturbance due to an act of malice committed by Andy which is similar to Hollywood Silver Fox Farm v Emmett. In Sam's case we are told that "after three months, Sam complained to Andy, who responded by causing even more noise and fumes". This clearly shows that Andy was acting deliberately and had the intention to interfere with the enjoyment and use of Sam's land despite Sam complaining. It must also be established that the type of nuisance was reasonably foreseeable and the defendant would have realised it as established in Wagon Mound (no 1). It is clear that the type of

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nuisance was reasonably foreseeable as by using a large yard to operate coaches in a quiet area next to Sams's house, Andy would have foreseen the risk of causing disturbance to people and he also had the intention to create further damage by causing more noise and fumes, therefore Andy has caused Sam to suffer inconvenience and has interfered with the use and enjoyment of his land.

Sam would be advised that the main remedies he could receive are damages and a prohibitory injunction to instruct Andy to stop committing the private nuisance.

A public nuisance is a nuisance "which materially affects the reasonable comfort and convenience of a life of a class of Her Majesty's subjects" as established in AG v PYA Quarries. The motorists would be advised that they may be able to make a claim of public nuisance against Andy as we are told that he has caused "obstruction to the motorists" by often parking his coaches in a narrow public road. It was stated in AG v PYA Quarries that class of people have to be affected by the public nuisance. In this case, the class of people affected by the unreasonable interference and obstruction were the motorists as the road had been blocked by Andy's parked coaches. This is similar to R v Ruffell where the class of people were the local residents who were affected by a side road blocked by traffic. It must also be established that the risk of the type of nuisance was reasonably foreseeable as seen in Wagon Mound (no 1). In this case, it is clear that the nuisance would have been reasonably foreseeable and that Andy ought to have known of the nuisance as by parking coaches in a "narrow public road" it is foreseeable that this will cause obstruction and traffic to motorists.

However, the motorists would be advised that for the public nuisance to be actionable against Andy they would need to show they have suffered "special damage" beyond that experienced by the others of Her Majesty's subjects. In this case, it is unlikely that the motorists have suffered special damage beyond that of the public generally as they have just suffered obstruction from Andy's parked coaches.

Sam would be advised that he can also bring a claim against Andy under the rule in Rylands v Fletcher for the damage to his fence and shed. Firstly, it must be established that something was collected and kept on the land as seen in Miles v Forest Granite Co. In this case, oil has been collected and kept on the land as we are told that "Andy bought a large supply of diesel oil in which he kept in a tank in his yard". It must be shown that the use of the land is non natural as seen in Rickards v Lothian. It is clear that the use of the land is non natural as Andy is storing diesel oil in a large tank in his yard which would not be regarded as being something which is naturally part of land. It must also be considered whether the thing brought onto the land is likely to do mischief if it escaped. In Sam's case, the oil would be likely to do mischief if it escaped as the "tank was situated near Sam's garden", therefore when it escaped it would affect Sam's property also. The oil had escaped and did cause damage to Sam's property as we are told that "the oil leaked from the tank and caught fire which immediately spread to Sam's garden destroying his fence and shed".

In Wagon Mound (no1) it was established that the type of damage caused would be reasonably foreseeable as reiterated in Cambridge Water Co v Eastern Counties Leather. It is reasonably foreseeable that the oil would have caused damage if it escaped as by storing the oil near Sam's garden which can catch fire easily, it is close to his property and would clearly damage his property so the defendant would have foreseen the risk. Sam would be advised that the remedy he is most likely to be awarded are damages to compensate for his destroyed fence and shed.