

NUISANCE

Purpose: reasonable user-give+take (Hunter)

STANDING TO SUE:

Hunter majority: exclusive possession + ownership (not employee/partner/au pair)
bc land tort, floodgates, certainty, practical: 1 negotiator.

- **Hunter Cooke:** link w/ land enough wife/child. Not: visitors/employees/au pair. Tort not just land - harm remedy.

- **Wu (co-owner):** type C, nuisance can arise on P's land w/ co-ownership.

- **Bema: investors** (no direct personal interest) can sue if no-one else

WHO SUED? "exclusive control" over space (Clearlite).

EMANATION REQUIRED:

Hunter, "sensory emanation" generally requirement. (building static, not enough)

Obiter CA (Bema) saw type B as "descriptive, not prescriptive".

But Wu considers it a Type B requirement (not Type C). Not determinative.

Exceptions:

- **Costaki:** where activities so offensive = nuisance. Very rare (brothel)

- **Malice: can make things that aren't nuisance into nuisance** (Hunter, Cooke!!)

- **Clearlite** - type A - (cited in Wu) "not a prerequisite ... that the nuisance emanate from neighbouring land".

TYPE OF DAMAGE

Type A, B, or C?

(Antrim: only Q: reasonable use of the land)

Type A: Material Damage.

No RP- easier to prove.

- **damage** (St Helens) trees, plants, cattle (property not person: Hunter)

- **non-trivial or transitory** (Halsey): but spots on linen yes: low threshold.

Unpleasantness (spot on car)=no (Halsey)

- **Causation** (St Helens) can be 3km away

- **Hypersensitivity** negates (Robinson) brown paper

but: **Miller, Cumming Bruce** obiter: if risk would affect RP, it OK.

but: **malice**. (Hollwood)

but: **Delaware:** RForeseeability (hidden)

Type B: Interference W/ Use + Enjoyment

Question of degree + circumstance (Halsey)

Considerations determining reasonableness:

A) **Locality:** determines level of discomfort people should be reasonably expected to withstand (Halsey) city: traffic / industrial

B) **Nature** (strength/annoyingness) piercing/loud/annoying (cf Halsey: yelling, throbbing, vehicles)

C) **Frequency constant/transitory/long term**

D) **Timing** (late night BAD Halsey) 10-6 (stronger than industrial locality)

E) **Hypersensitivity.** **Hollywood:** Q of whether nuisance would affect RP.

Fox=no, (but malice)

Type C - Natural Right to Land

Wu SC - establishes new category obiter.

Easement/right 2 access/support of ground.

- P w/ a proprietary land interest/own land.

- **Total abrogation of access?** Must be substantial + unreasonable

- Not really reasonability.

- **Bema** didn't really like type C

MALICE: both type A+B

Turns otherwise reasonable use of land into nuisance (Christie) knock/bang - no to yes

Mitigates super-sensitive P (Hollywood)

Must be reason for it: Christie + Hollywood.

Outtrim (in Christie) sign could be nuisance.

Pickles: D right to water means that D's motive irrelevant? BUT **Hollywood** distinguishes

Mentioned in **Hunter Cooke**; still relevant.

NUISANCE NOT BY D

Vic liability: **job Halsey, Hollywood (family)**

Matheson: others (trespass, fireworks, stole fruit)

i. **Is the D in a position of control over 3rd party?** relationship, D control land

ii. Was interference with P's land a "natural + probable consequence" of failure 2 properly control/supervise? (children likely w/ no fence)

Sedleigh (pipe) (wind?) To "continue"/adopt nuisance, two requirements:

1. Is D aware (or should have been aware) of risk?

2. Was D able to prevent the risk, + didn't?

Delaware: (roots) if D wouldn't be reasonably expected to know (policy: hidden+authority), they should be told + given time to fix.

One-off event? Normally continuing:

Matheson: not intermittent, repetitive =yes.

Underlying state of affairs (8yr).

Delaware/Sedleigh: ongoing state of risky affairs.

Hollywood: OK if potential 4 repeat.

Exception: **Rylands**

Remoteness

Foreseeability - **Cooke, Delaware. Would D be reasonably expected to know causing nuisance?**

long chain of events.

DEFENCE - Coming 2 nuisance: (typeB)

Bad: Sturges (property rights) (Lane, Miller: bound)

Yes: Miller, Denning (no Type A: Neuberger/FenTi)

Yes, modified: if build/change use of land LOTS after D's actions (obiter **Fen Tigers: no. P didn't modify. Kennaway: yes** but)

if nuisance increases, no defence (**Kennaway**).

sound boat bigger.

DEFENCE: Planning permission: No-FenT.

REMEDY:

A: \$\$: Easily fix, one off

B: P prefers injun. \$ allows D to budget/buy right.

The **Shelfer** test no longer needs to be satisfied for \$ in lieu bc **Fen Tigers** (obiter, HOL): judges' unfettered discretion

Shelfer test: narrow, all 4 satisfied: Only small injury to P's rights, capable of being estimated + compensated in money (not type B), + an injunction would be oppressive to D.

Fen Tigers Considerations: + **Shelfer**

-Public interest (**Neuberger**) (**Denning+CB: Miller**) public loss, resource waste, business down, others affected, loss jobs

-Planning permission **Sumption** "decisive",

Neuberger: cb relevant.

-Transitory? = **Hunter** = dust temporary, no inj

-Coming 2 nuisance (**Miller: CB, Denning**)

INJUNCTIONS ARE FLEXIBLE:

Halsey: specific 10-6. General: smell any time.

Kennaway: bound but (bc: public interest: tourism/enjoyment/employment, coming 2N), (certain # of events, deciles etc.)

Miller: Lane delays operation for 12 months.

TRESPASS -

Actionable per se **Entick**.

Purpose: protect/test property rights/ownership.

1. **STANDING:** P must have ownership/possession of the land (or if long term - landlord).

2. **INTENTION** to act - generally needed **League Against Cruel Sports** modifies, ADDS liability. Failure to exercise proper control over something else (with own will). Like **Gregory**.

3. **ACT** (or omission to act/leave: **Robson** obiter)

4. **ENTRY:** happen by object. **Davies: no touch**.

5. LAND DEFINITION

-airspace: **Davies:** (owned on the ground, owned in the heavens) bullet, bird, balloon, kite, tower

-**Bernstein:** limit: "necessary for ordinary use and enjoyment of land + structures". **Drone 100ft+ away. Pickering:** hot air balloon not liable.

BAD: nuisance std, absurd outcomes, unworkable, not purpose. **GOOD:** public policy: satellites, airplanes (although statute+WAY high).

Not-binding: **UKHC. Davies** best = purpose.

L+R: Signs: **Gifford v Dent - 4ft 8in. Kelsen v Imperial Tobacco Co Ltd - 8in.** BUT: practicality. **Subsoil: UKSC: Star Energy-dig trespass obiter.**

6. DIRECT? (closeness act + trespass)

Esso - Must be direct, not simply consequential (not oil - tide - shore)

Gregory- can include "natural + probable consequence" (yes: rubbish touch wall) (few days)

7. DEFENCES:

A) Justification licence/warrant/resource-consent?

Robson- implied/express licence. Can be revoked/rebutted by sign/other. Reasonable time 2 leave.

Harris v AG - "fuck off" not enough - combo: words, actions, context + tone.

Entick - D needed statute/case authority

Tararo Police can enter and film surreptitiously w/ in licence as legitimate + correct IL procedure. **Sting 4 cannabis.**

Hamed Police not entering to ask for EL, didn't want occupiers to know they were there (no IL)

B) Necessity: emergency **Leason**

C) Protection of persons: Leason

D) Ex turpi causa: Leason: P illegal/immoral action and D stopping it. (1. reliance: COA based on D's illegality, 2. causation: P's tort caused by D's illegality, failed-tort based in property rights).

8. REMEDIES: damages (normally, as one off)

- **Remoteness** (actionable per se, affects #)\$ (closeness between tort + harm)

Mayfair - look @ reasonable foreseeability of damage from Ds actions (no: good car, fire house)

Balance, not strict (**McMullin J**):

-reasonable foreseeability-possible/natural consequence-probable (**Wagon Mound**)

-intention to damage (general or specific),

-direct consequence (old law: Re **Polemis**)

-nature of damage (no personal - no liability)

-procedural history - past rejection of claim

-insurance - fixing cost spread across

CONCLUDE

30,36,42,48,54,60//4,10,22,25,40//60.

or 40,46,52,58,1.04,1.10.

BATTERY: intentional touch

Purpose: sanctity/autonomy of body.

Protection from unwanted contact.

“Fundamental principle... **every person’s body is inviolate**” - Lord Goff, **Collins**

1. **Actionable ps** (Wilson-boy)(Moir - spit)

2. **Intentional** (Letang) Intend to act, not result (like: direct) But: **not liable even w/ intent to drive bc negligent not battery.**

3. **Application force** (Cole “least touching”) (Moir - spitting)

4. **Not generally accepted** conduct daily life (Imply consent) **Backslaps** **Tuberville.**

Jostling shop, handshakes, 1 touch for attention- ok. **Grab arm 2 detain** no (Collins)

Unsure bits:

5. **Awareness** (not necessary: Kerr)

6. **Hostility:** (Cole: yes: “least touching in anger”, Wilson approves F: obiter: **can even be trying to help**) **PURPOSE.** (Even if it were necessary...) **F slap on back, surgery mistake, bad prank** - all maybe liable. **Cutting hair “to help”** Forde. **Cleaning up streets** (Collins)

7. **Directness: closeness act+battery**

(Typically yes-logic, but **Katko: trap 3km away, months later**) logical and reasonable correlation...? **Time and place don’t matter.**

8. **Remoteness:** yes liable, to what extent: closeness between battery+harm.

Bettel: liable for more serious consequences even if unlikely (multiple surgeries from shaking). Intention 2 touch = enough **Bettel.**

9. **Defences:** (total list: **pg63**)

- Necessity (F) **lie down sick bed.**

(Operations: only reasonably required, not contrary to wishes)

- Consent (Collins & F discuss)

- Self-defence + defence of another

10. **REMEDIES - damages**

ASSAULT: reasonable apprehension of battery

Purpose: prevent feeling scared etc.

1. **Intention** (Richardson: stated)

2. **Act** **Tuberville: hold up hand and threaten** = yes **words**

3. **Causing P to reasonably apprehend the infliction of a battery**

Kerr - couldn’t apprehend: **sleeping.** Argue: wake+aware= continuing apprehension.

Tuberville - IF this weren’t happening - I would (no possible battery - not assault)

Greaves - If you come forward... I’ll...

(possibility of harm = assault) (like **Brady**)

Brady - P don’t need to fear, only RP apprehend (**unloaded gun**)

a) Does D have (apparent) ability 2 carry out threat? (sometimes hard to know)

Stephen - **within 2 sec, going 2 strike.**

Brady - **unloaded gun** (but P unknowing)

b) Context change sitch? (location/relation)

Holcombe - **words alone not assault: context more important.** (ex: “I’ll kill you if.”)

Unsure bits:

4. “**imminent**”?

Richardson - yes, **keys.** **Stephen** **within 2 sec.**

Holcombe - no, w/ relationship context.

5. “**direct**”? **Holcombe** “**If you take me to court I’ll kill you**” - calling her, not too direct context

6. **DEFENCES**

REMEDIES - damages usually

INTENTIONAL INFLICTION OF EMOTIONAL HARM - Wilkinson v Downton

1. **Conduct “directed” @ P** (lots readers book no)

2. **Intent to cause severe distress:** “so plainly calculated to have an effect” - **Wilkinson**

Recklessness not enough (**Rhodes**)

3. Result: psychiatric illness(not distress) **Rhodes**

Unsure bits:

4. Needs to be deceptive (**Wilkinson**), threatening (**Stevens?**), abusive?

5. Intention: imputed matter of law (**Wilkinson**) or inferred (**Rhodes**) matter of fact? Now evidence is more needed: can’t assume intention through law.

6. **REMEDIES: damages.**

FALSE IMPRISONMENT

Purpose: protect freedom of movement always

1. **Intention**

2. **Infliction of TOTAL restraint (restricting freedom of movement)** (**Bird maj: stop crossing motorway** not enough) “**Boundary large or narrow, moveable or fixed**” **Bird min:** not total.

3. Without consent or other justification

Robinson - accepted reasonable terms on entry (lots signs) **pay ferry penny again**

Herd - **employment contract** = consent. **train** = no, terms of entry. **Illness** = different obiter.

4. **DEFENCES:** **Brockhill:** No defence that the D acted honestly/ reasonable grounds. (**calculated release date lawfully, later changed**)

Unsure bits:

5. **Not necessary for the P to have knowledge** of the restraint. **Meering: asleep, drunk, lunatic.**

Questioned but didn’t know couldn’t leave.

Murray - approved: obiter, **dressing w/ police there.**

REMEDIES: damages usually.

DEFAM!!!

ONE: DEFAMATORY MEANING

a) What do the words mean?

Charleston Test: “What the words would convey to the **ordinary, reasonable, fair-minded reader**”.

They: understand hints/inferences, read once, don’t scrutinise for bad meaning/avid for scandal, ordinary IQ + gen knowledge.

Natural+ordinary meaning (explicit/implicit)

Lewis, or legal innuendo (**Morgan**) with parallel sting (hypocrite) w/ extra facts **communist**

Levels of allegation spectrum: (D): reason to inquire, to suspect, guilt. **Lewis. Little v**

Hagaman “**I’ve written to the AG**”. D - 1, P-3 / 2.

“**Single meaning rule**” - assume all readers react in same way (**Charleston**) Yes multiple meanings **intolerant/bully** exception: innuendo

Publication as a whole- **Charleston.** Antidote +bane, headline+text. Must be “sufficiently connected” yes:**front page refers to pg6** **Only read 1/10 articles.**

Antidote must neutralise bane (+ be strong!) **NZ Magazines v Hadlee: article deny lesbian no!!**

Meaning/sting/barb: what it says about the P’s character/conduct. Depends: context.

Eg: **intolerant, bully, bigoted/homophobe, liar, talentless, unethical, sleazy, cheat, biased** Common: **dishonest about... , irresponsible, incompetent, lack integrity, heartlessness, selfish, reckless, hypocrite, mislead public, improper(?)**

b) Is this meaning defamatory?

Test 1: Sim Would the words tend to **lower the P in the estimation of right thinking members of society generally?** **Can evolve**

Test 2: Partmiter: Expose P to hatred, ridicule + contempt

Test 3: Youssouppoff **Cause others to shun and avoid the P** **contagious diseases.**

Humour/abuse = hard to say. Dead = can’t sue.

TWO: IDENTIFICATION

“of and concerning the P” (**Hulton**) or **those acquainted w/ P would reasonably think it is about them** Name/details (**Morgan-dog doping**)

Don’t matter:

- Intention (**Hulton**).

- **Audience not believing it** (even know its false) (**Morgan**) (even legal innuendo) but affects \$\$

- **Minor discrepancies in identifying details** (**Morgan**). **District, last week, wasn’t restrained.**

Argument! but average reader not v analytical

Group: Knuppfer

P must be generally understood to be included (same rule:**Morgan**) (can be P + others)

YES if: P is singled out in words/circumstances (**team strategy cheating: coach/captain**)

YES if: small class (<12) and defamation reasonably understood to **apply to “ALL”**

NO sweeping generalisations.

s6 - corporations must prove actual or likely financial loss: less donations/customers, value firm/share price. BUT **Justice Palmer** meeting time is enough 4 \$ loss. **Meaningless.**

Council/govt can’t sue: Derbyshire County Council. BUT reflects specific indiv - yes **Mayor**

THREE: PUBLICATION

The D must make the information known to a third party Or: put it out of their own control so that it **might possibly be seen** by 3rdp (**Pullman**)

(leave out) (private confidential OK, not to PM) NOT: **thief breaking and entering** (obiter)

Extent of liability: D **responsible for reasonably foreseeable audience depending on initial publication** (**Pullman**) depends: nature content, who, how presented: **journalist/bff**

Repetition rule - similarly liable when republishing allegation. (**publisher, journalist, sub-editor, uploader, printer, source**)

The contentious element is X. The legal test is Y. Arguments for P. Arguments for D. Conclude.