Nuisance

NAVIGATING LEGAL LIABILITY FOR PUBLIC AND PRIVATE NUISANCE & THE INSURANCE IMPLICATIONS

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Disclaimer

Why Nuisance

Understand the legal concepts

Differentiating public and private nuisance

Exploring Liability and legal remedies

Insurance policy coverage considerations

What is Nuisance?

- Definition: “An act or omission that causes unreasonable interference with a person’s use or enjoyment of land.”
- Types of nuisance:
- Private Nuisance: affects a specific individual or a limited number of people
- Public Nuisance: affects the community or a significant section of the public.

Key historic cases:

- Rylands v. Fletcher (landowner liability for escape of dangerous things
- Miller v. Jackson (balancing nuisance and recreational rights)

A look around the world

Nuisance a global phenomena?

Lakes & Cricket Balls

What needs to be established in nuisance?

- Unreasonable interference
- Caused by defendant’s act or omission
- Reasonableness judged in context.

Public v. Private Nuisance

Private Nuisance

- Focused on individual landowners or tenants
- Typical cases: noise, smell, pollution, encroachments
- Damages can be awarded, or injunctions issued

Public v. Private Nuisance

Public Nuisance

- Affects the community or a significant number of people
- Examples: obstructed roads, pollution affecting water supplies
- Actions usually brought by public authorities, but individuals can sue if they have suffered special damages. (litigation funders)
- Remedies: injunctions, sometimes criminal sanctions

Factors influencing liability

- Fault or negligence
- Strict liability (e.g. Rylands v. Fletcher)
- Reasonableness of conduct
- Foreseeability

Defenses

- Statutory Authority
- Contributory Negligence
- Prescription (long-standing use)

Legal Remedies

- Damages: compensation for loss or injury
- Injunctions: court orders to stop or prevent nuisance
- Abatement: self-help remedies.

Insurance Policy Coverage

Coverage for nuisance claims

- Public Liability Insurance / Commercial General Liability (CGL)

- Coverage:
- Legal defense costs
- Damages awarded
- Sometimes investigation costs
- Accidental or unintentional nuisance

- Damage or injury caused by the policyholders’ activities

- Public liability

- Third party claims for property damage

Insurance Policy Coverage

Exclusions & limitations

- Intentional acts
- Pollution (sudden & accidental only?)
- Property damage? Pure Financial Loss?
- Statutory offenses and criminal nuisance
- Ongoing or Long-standing nuisance e.g. prescriptive rights.
- Some policies will mention coverage for nuisance

Nuisance specifically mentioned

Example policy wording insuring clause

- **Insuring Clause**
    - The **Insurer** will provide indemnity to the **Insured**:
- against legal liability for **Damages** in respect of:
- **Physical Injury** to any person;
- loss of or damage to **Property**;
- obstruction, nuisance, trespass, loss of amenity or interference with any right of way, air, light or water or other easement
- occurring during the **Period of Insurance** in the **Territorial Limits** and caused in connection with the **Business**.
- for **Defence Costs** of any claim against the **Insured** which is covered (or if it is upheld would be covered) under paragraph A1.1(1) above.

Real-World Examples

- An industrial plant pollutes a river causing health issues in the community. The local residents sue for damages and the insurer defends and pays damages under a public liability policy.
- A nightclub causes noise late at night leading to neighbours suing for private nuisance. Policy outcome?

Policy coverage for legal liability for nuisance

- Accidental or unintentional nuisance
- Damage or injury caused by the policyholders' activities
- Public liability
- Third party claims for property damage

Key Private Nuisance UK cases

Sturges v. Bridgman (1878)

- **Facts:** A confectioner's factory built near a doctor's consulting room. The noise and vibration from the factory disturbed the doctor's practice.
- **Issue:** Whether the factory's noise was a private nuisance.
- **Decision:** The factory was liable because what was reasonable in one context (industry) was unreasonable when it interfered with a doctor's practice.
- **Principle:** The court emphasized the importance of "reasonableness" and the local context in nuisance claims.

Key UK cases

Miller v. Jackson (1977)

- **Facts:** A cricket club's activities caused cricket balls to hit neighboring properties, causing damage and annoyance.
- **Issue:** Whether the cricket club's activities amounted to a private nuisance.
- **Decision:** The court balanced the rights of the cricket club against the nuisance caused. Injunctive relief was refused because cricket was a reasonable activity, but damages were awarded.
- **Principle:** The case highlights balancing nuisance against social utility.

Key Private Nuisance UK cases

Allen v. Gulf Oil Refining Ltd (1981)

- **Facts:** Oil fumes from a refinery caused annoyance and health issues.
- **Decision:** The refinery was liable because the nuisance was unreasonable and caused harm.
- **Principle:** The case reinforced that pollution and emissions causing damage or disturbance can constitute private nuisance.

Key Private Nuisance UK cases

Hunter v. Canary Wharf Ltd (1997)

- **Facts:** Residents claimed loss of TV signals due to construction of Canary Wharf.
- **Issue:** Whether loss of TV signals was a property damage nuisance.
- **Decision:** The claim was dismissed because the nuisance did not cause property damage; only annoyance was involved.
- **Principle:** Nuisance must involve property damage or interference with land use.

Key Public Nuisance UK Cases

R v. Rimmington (2005)

- **Facts:** The defendant sent offensive messages to various individuals, causing a public disturbance.
- **Issue:** Whether this constituted a public nuisance.
- **Decision:** The court found it was a public nuisance because it disrupted public order.
- **Principle:** Acts that cause widespread disturbance or threaten public order can amount to public nuisance.

Key Public Nuisance cases

R v. Goldstein (1983)

- **Facts:** A public house was accused of creating a nuisance by loud noise and disturbances.
- **Decision:** Court held that the nuisance was a public nuisance because it affected the community's peace.
- **Principle:** Noise or disturbance that affects the community qualifies as a public nuisance.

Key Public Nuisance UK cases

Attorney General v. PYA Quarries Ltd (1957)

- **Facts:** Quarrying operations caused noise, dust, and pollution affecting nearby residents.
- **Decision:** The Court held that the quarrying activities amounted to a public nuisance.
- **Principle:** Commercial activities that significantly interfere with public rights can be nuisance.

Key Public Nuisance cases

R v. Manchester Corporation (1925)

- **Facts:** The city's sewer system discharged effluent into the river, affecting public health.
- **Decision:** The discharge was a public nuisance because it affected the community's health.
- **Principle:** Pollution affecting the community's health or environment can be a public nuisance.

Summary of Key Principles from the cases:

- **Reasonableness**: Activities that are reasonable in context may not constitute nuisance; balancing social utility and private rights is essential.
- **Property Damage & Interference**: Nuisance involves unreasonable interference with land or land use.
- **Public Disturbance**: Acts that disturb the community or threaten public order can amount to public nuisance.
- **Pollution & Emissions**: Can constitute nuisance if they cause damage, annoyance, or health issues.
- **Balancing Rights**: Courts often balance individual rights against community or social interests.

New Case

Fearn v Board of Trustees of the Tate Gallery [2023] UKSC 4

- the UK Supreme Court ruled by a majority that the 360-degree public viewing platform on the tenth floor of the Tate Modern's Blavatnik Building caused a legal private nuisance to owners of nearby glass-walled Neo Bankside luxury flats because hundreds of thousands of visitors constantly overlooked and photographed their homes.
- **The Conflict and Court Journey**
- **The Problem**: The Tate Modern opened its Blavatnik Building extension in 2016. Visitors on the top-floor platform could look straight into nearby glass-walled apartments just 34 meters away, often taking photos or waving.
- **Lower Courts**: The High Court and the Court of Appeal originally rejected the flat owners' claims, stating that overlooking was not a legal nuisance and that the owners could protect themselves by putting up blinds.
- **Supreme Court Decision**: The Supreme Court overturned those rulings, deciding that constant, intensive visual intrusion substantially interfered with the ordinary use and enjoyment of residential property.

- **Key Legal Takeaways**
- **Visual Intrusion**: The ruling established that looking, filming, and observing a neighbor's home can amount to a private nuisance if it is extreme enough.
- **Normal Use vs. Sensitivity**: The majority noted that occupying a home with glass windows is a normal, ordinary use of land, meaning the owners were not at fault for having transparent walls.
- **Planning Permission**: The fact that the viewing deck had planning approval did not strip neighbors of their common-law protection against nuisance.

New Cases & Developments

Developing Quickly

- Andrews v. Konospan
- Chicken Farms
- Data Centres
- Supreme Court limits public nuisance on private land. (The McCafferty case)

- The development of Persons Unknown in Public Nuisance

- Kensington and Chelsea RLBC v. Persons Unknown (2026)
- Wolverhampton CC v Persons Unknow (2026)
- Gatwick Airport v. Persons Unknown (2026)
- Heathrow Airport v Persons Unknown (2026)

- Thomas v. Nicholas (Court of Appeal) (2026)
- Sintes v. Tower Hamlets MBC (2026) (Court of Appeal)
- R (on the Application of Williamson) v. Caerphilly County Borough Council (2025)

Private Nuisance in other jurisdictions

USA, France and Germany (Elliott Cunningham's Report)

- All three protect the use and enjoyment of land against interference emanating from a neighbour.

- All three do so by asking whether the interference exceeds what a neighbour must reasonably tolerate.

- However this is where the similarity ends.

- All three systems locate the rule in different parts of their law
- Give the claimant different remedies
- All give radically different answers to the question "but we hold a permit"

- In underwriting liability, the divergence in remedy and procedure matter more than convergence in principle

Where the systems agree

- Threshold of tolerability
- Regulatory compliance does not obviate a neighbour’s monetary claim.
- Criminal fines are uninsurable in all three as a matter of public policy.

What does it mean commercially

- USA venue is important. Each state having it’s own conclusions
- France, liability attaches to the land not the the act.
- In Germany a lawful, compliant permitted operation can still be legally liable.

Why Nuisance matters to liability insurers

- Potentially long-tail exposure.
- Can involve an injunction rather than financial compensation, therefore will the policy pay out at all in the absence of “damages”
- Liability frequently attaches without fault.
- USA nuisance has been a vehicle of successive waves of mass litigation

Private nuisance main points some differences

	United States	France	Germany
Strict liability	Only for abnormally dangerous activity or substance	The general rule — liability *de plein droit*	Effectively, through § 906(2) 2 and the analogous compensation claim
Causation	Proximate cause; classic tort rules	Direct causal link; risk alone can suffice if probability is high	Attribution to a *Störer* — the person who by conduct or by the condition of the land causes the interference
Compliance defence	No	No	Bars the injunction (§ 14 BImSchG); creates a presumption of insignificance (§ 906(1) 2)
Pre-occupation defence	Right-to-farm statutes in most states, of varying breadth	Yes, statutory: art. 1253 al. 2 C. civ.	Not as such; locality (*Ortsüblichkeit*) does much of the same work
Injunction	Discretionary; may be conditioned on payment	Available, including in *référé* within weeks, with a daily penalty	Available under § 1004 unless barred by § 14 BImSchG

Damages	Diminution in market value (permanent) or lost use value (temporary); annoyance and discomfort; punitive	*Réparation intégrale*; no punitive element	Compensatory only; § 249 restitution in kind or § 251 money
Abatement	Self-help abatement available	Not as a self-help doctrine; the claimant asks the court for cessation and *remise en état*	Limited self-help (e.g. § 910 BGB, overhanging branches)

Conclusion

- Importance in understanding the principles and some examples of nuisance

- Awareness in mass litigation and litigation funding
- Potential link in climate change and nuisance
- Extreme weather events the greater the risk of the argument that nuisance has been created.
- Litigants in Person & AI
- Public Sector organisations exposure
- Commercial organisations in “sensitive” industries)
- Increase in Abatement notices from local authorities.
- Permission does not mean absolution.
- All coverage for any particular case will be subject to the policy terms, conditions and exclusions.