

Private nuisance question



**ASSIGN
BUSTER**

FOUNDATION IN ARTS LAW OF TORT ASSIGNMENT On the facts, the claimant Garfield suffered smashed panes of glass in his green house and sustains a fractured skull when he is hit on the head by a cricket ball. The local cricket club owner(defendant) may have an action brought by Garfield(claimant) under the tort of negligence or private nuisance. The author will first discuss on negligence and then later on to private nuisance. In the novel cases where the existence of a legal duty is less obvious, the Caparo v Dickman test must be satisfied.

As it was reasonably foreseeable that claimant would be injured, there was sufficient proximity and it is fair, just and reasonable to impose liability on the defendant. Hence it is arguable that the local cricket club owed Garfield duty of care as the first element under negligence can be proven. The second element which Garfield have to prove is whether the defendant breach the duty of care. To breach the legal duty of care, is to fall below the appropriate standard of care expected of the defendant when performing the act in question.

In the case of Bolton v Stone, it was held that if the likelihood of harm caused by defendant was low then the likelihood of the defendant breaching of the standard of care would also be low. However, base on the facts the claimant house is built so close to the ground that it is almost inevitable that the ball would be hit over the fence and into the garden's house from time to time. Thus the likelihood of harm is great, creating a high risk of injury to the claimant and the standard of care expected of the defendant would be higher.

However, by referring back to the facts, since a 3 metre fence is erected it would seem to be sufficient to prevent injury or loss as the law does not expect the defendant to take absolute precautions (*Fardon v Hercourt & Ravington*). Thus Garfield's action to bring the case under the tort of negligence would probably fail. Garfield will then be best advised to bring the case in private nuisance. Private nuisance is the special damage to those who have a landed interest whose enjoyment of it is in some way diminished.

On our facts, Garfield bought the house which we can assume that he is the owner of the house who have proprietary interest or exclusive interest in the land (*Hunter v Canary Wharf*). Thus he may sue the defendant for private nuisance and probably seek for an injunction. One should be noted that the law of private nuisance has attempt to preserve a balance between two conflicting interests, that of one occupier in using his land that he thinks fit and that of his neighbour in the quiet enjoyment of his land (*Sedleigh Denfield v O'Callaghan*).

By doing this, the courts will look into the issue of 'reasonableness'. In other words the courts will assess the reasonableness (level of interference) by taking into account some factors such as locality, duration, sensitivity and public benefits. With regards to locality, it was clear that the claimant had suffered physical damage and damage to his property. Thus the issue of locality is irrelevant (*St. Helens Smelting Co. v Tipping*). By referring to a similar case, *Miller v Jackson*, the claimants had bought a house just next to the cricket ground and the claimants knew about it.

The cricket ball kept sailing over the claimant's house and they sought an injunction. At the mean time, the defendant erected a highest possible wire

fence, install unbreakable glass and cover the claimant's garden with safety net and ask the batsmen to keep the ball low: the claimants were not content and seek further for damages and injunction after five more balls flew in their house in 1975. The court rejected the injunction as Lord Denning said that the claimant has come with open eyes.

Base on our facts, it is highly unlikely that the claimant is unaware of the existence of the ground as it has been played for nearly 100 years. Therefore, since Garfield had come with open eyes it may not be actionable as it is already a pre-existing condition at the time of the agreement. (Southwark London Borough Council v Mills) Then, with regard to the issue of duration and seriousness, the law states that the longer the interference goes on the more likely it is to be unreasonable. However, a nuisance need not necessarily last long.

If the time to carry out the activities are unreasonable or the degree of seriousness is high it could still amount to nuisance (Crown River Cruise Ltd v Kimbolton Fireworks Ltd). Coming back to the facts, after the incident having two cricket balls smashed the glass in his greenhouse, the next hit was few weeks later which caused Garfield to sustain fractured skull. Thus it may not seem to be unreasonable as the next hit was a few weeks after the first hit. But, having a fractured skull after being hit maybe serious and the court might consider it as a factor to issue the injunction.

However, it is arguable on the basis of sensitivity if the force use for the hit was not too excessive or unreasonable and if Garfield have had injury on the head before the hit then the defendant may not be held nuisance. (Robinson v Kilvert) If the nuisance is established, the defendant will try to raise the

possible defence which is prescription since the cricket has been played on the ground for nearly a hundred years. However the defence of prescription would only be applicable if the claimant had borne with the nuisance for twenty years and not when the defendant started the activities (*Sturges v Bridgman*).

Thus the defence may succeed if the defendant had moved in and borne with the nuisance for twenty years or more. The defendant would also raise the issue of public interest. The court would inevitably be concerned to some extent with the utility or general benefit to the community of the defendant's activities. This means if the claimant's actions are of importance, the risks that may happen when completing these actions may be acceptable (*Watt v Hertfordshire*).

However, the court will not accept the argument that the claimant should put up with the harm because it is beneficial to the community as a whole (*Bell v Cement Co.*). If Garfield's purpose of suing is to restrict the nuisance, the only remedy that he can seek against the cricket club is a prohibitory injunction. It is an equitable remedy used to put a stop to certain offensive activities that affect the claimant continuously and it will only be awarded if the court feels that it is necessary to. If the nuisance is temporary and occasional, an injunction may not be issued.

In conclusion, even though Garfield did experience private nuisance, the activities carried out by the defendant seem to be reasonable. Unless Garfield can prove that the degree of seriousness caused by the defendant is unreasonable, the defendant would probably not be liable. Furthermore, if Garfield wants to claim compensation for the fractured skull, he has to bring

the case under the tort of negligence as nuisance claims are limited to loss of enjoyment of land. However, as mentioned earlier that breach of duty could not be proved therefore the defendant would probably not be liable.