

Al v goldstone motoring racing ltd law land property essay

[Law](#)



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\n[/toc]\n \nAl could possibly have a claim against Goldstone Motoring Racing Ltd in private nuisance. An action for nuisance may be brought against anyone with a degree of responsibility for the nuisance[1], including the creator of the nuisance and the occupier of the land from which the nuisance emanates. Thus, Goldstone Ltd satisfies both the requirement of the creator of the nuisance and the occupier of land. ' Private nuisance is sufficiently defined as a wrongful interference with another's enjoyment of his land or premises by the use of land or premises either occupied or in some cases owned by oneself.[2]' In order to be able to sue for a private nuisance, the claimant must have a proprietary interest in the land affected, to be either the owner, tenant or to have an exclusive right of occupation.[3]Therefore, Al is able to sue as he seems to satisfy this requirement. Nuisances fall into the three main categories of encroachments, ' sensible material harm' and ' sensible material discomfort'.[4]The reasonableness of ' sensible material discomfort' is a question of degree and it depends on a number of factors. If noise is concerned, one relevant factor which should be considered is the locality where the activity takes place. It was said that ' what would be a nuisance in Belgravia Square would not necessarily be so in

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Bermondsey.’[5]Goldstone might argue that they obtained planning permission for the changed use of land. Although it may not be an absolute defence, it could alter the character of the neighbourhood and become acceptable as in *Gillingham Borough Council v Medway (Catham) Dock Co Ltd*. [6]On one hand, Alan would struggle on the basis of *Gillingham* but on the other hand, a planning authority by the grant of planning permission cannot authorise the commission of a nuisance. [7]Based on a recent case, [8]where the defendant’s land was used for motor sports racing, the noisy activities emanating from the circuit could be regarded as recreation and an established feature of the locality [9]. Concerning Al not being able to sleep during the day, Goldstone could raise the argument that Al is hypersensitive due to the nature of his job. The notion on abnormally sensitive claimants is that they are unlikely to succeed in their claims since the standard of tolerance is that of the ‘ normal’ neighbour. [10]On the basis of *Robinson*, Al is unlikely to be successful as his use of land could be regarded as unreasonable as any other ‘ normal neighbour’ could tolerate the noise emanating from the circuit during daytime. Taking into account the duration, a one off event is unlikely to be actionable in private nuisance though it could be a public nuisance, [11]provided that other neighbours are also affected. In this way, the residents could benefit an injunction to limit the events on certain hours.

Betty v Goldstone Motoring Racing Ltd

Betty is a lodger so this creates the problem of whether she is standing to sue in nuisance. It is a long-established law on nuisance that an action in private nuisance can only be brought by a person with an interest in the land

affected.[12]Therefore, no action is available in nuisance for people sharing the same house who do not have a proprietary interest in the land.

[13]Hence, Betty is not entitled to sue for the reason she has no proprietary interest in the land. The other important issue is that Betty has suffered personal injury as the fumes exacerbate her asthma condition. It has been said that in nuisance only damages to an interest in land are protected, and respiratory diseases do not fall under this category.[14]An alternative way to claim a remedy is either under negligence for personal injury, or under the Human Rights Act 1988.[15]The Act imposes a positive obligation on all public authorities to ensure that all citizens enjoy equal respect for their private lives[16]and if they fail to observe this duty, even non-landowners could be awarded damages[17].

Foxhill Mineral Water Ltd v Goldstone Motoring Racing Ltd

In order for the rule in Rylands v Fletcher[18]to apply, the requirements are that a defendant in the course of the non-natural use of his land brings on to that land, and accumulates something which if it escapes it is likely to do mischief.[19]The tort is one of strict liability, which means that if an escape occurs and causes harm, then the defendant will prima facie be liable for that harm.[20]Firstly, there is the strict requirement emphasized in Transco plc v Stockport MBC [2004] 1 All ER 589[21]that there has to be an accumulation on the part of the defendant, for his own benefit, of something creating an exceptionally high degree of risk and is likely to do mischief if it escapes. In the scenario, there is a deliberate accumulation of petrol on the part of Goldstone. If the product is known or ought to be known to carry a

high risk of harm 'likely to do mischief' then liability may arise no matter how 'careful he might have been and whatever precautions he may have taken to prevent the damage'. [22] Therefore, the fact that the fuel is stored in a special compound is irrelevant. Secondly, the accumulation must be a non-natural use of land. On the basis of *Richards v Lothian* [1913] AC 263, [23] an ordinary use of land would not attract the operation of the rule but some special use bringing increased danger is required [24] so it was held that the supply to the land of water in small pipes did not fall within the rule. However, in *Cambridge Water Co v Eastern Counties Leather plc* [1994] 1 All ER 53, it has been clarified that non-natural use includes the storage in considerable quantities of chemicals on industrial premises. The cases of *Transco* and *Cambridge Water* [25] rejected the view in *Read v Lyons* [26] that during war time the manufacture of munitions could be an ordinary use of land. Applying the principles to the facts of the scenario, it seems likely that a court would be entitled to hold that the storage of fuel by Goldstone was a non-natural use of land. A relevant type of harm has been caused from the escape and in the basis of *Cambridge Water*, if the pollution caused is foreseeable, then Goldstone will be liable for the diminution in the value of the land and the consequential economic loss.

Del v Goldstone

Claim under Trespass Trespass to land is constituted by unjustifiable interference with the possession of land. [27] It is actionable per se, without proof of physical damage and it is an intentional tort. However, what is required is intention for the act and not for the trespass. Most trespasses to land are intentional but in *League Against Cruel Sports v Scott* [1985] 2 All

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ER 489, it was held that it could also be committed negligently but deliberate entry is necessary. Liability for unintentional intrusions arises when the defendant intended the object to enter the claimant's land or if he knew there was a real risk that it would enter and their entry was a consequence of the failure to exercise proper control to them[28]. The burden of proof is on Del to prove that Goldstone had acted negligently, thus to prove that the perimeter fence was not of a satisfactory height and Goldstone failed to exercise reasonable care. Provided that Goldstone caused the harm on Del's property because of carelessness and was not too remote, Del would be able to recover damages.

Edwina

Trespass can also be committed through the airspace as property rights extend from the surface into the airspace above the property. However, it depends on the height and the extent of the infringement[29]. In *Bernstein v Skyviews & General Ltd* [1978] QB 479 it was held that an aircraft flying 'several hundred feet' above a house does not constitute trespass because the landowner's rights extend only to such height as is necessary for the 'normal user of the land'. Edwina has an interest in the airspace above her land so it can be protected against invasions but although that the aircraft 'passed too low over her property' and that could amount to a trespass[30], there is nothing to suggest that the aircraft interfered with her ordinary use of land. The Civil Aviation Act 1982 allows, for practical reasons, aircrafts to cross the airspace of landowners below. The defences in trespass are those of necessity and consent, hence, Goldstone could raise the argument that

the helicopters used were for the benefit of the public who wished to watch the course in television.

Public Nuisance

In considering whether the neighbours could bring an action in public nuisance, it is required that special damage must be proved which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects[31]. There has to be evidence that there has been an adverse effect- from noise, fumes and other forms of nuisance- on a class of people in order for the residents to have a successful claim.