

Nuisance: tort and planning permission essay sample



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Nuisance where the defendant's actions " materially affects the reasonable comfort and convenience of life of a class of plaintiff's subjects" " any continuous activity or state of affairs causing a substantial and unreasonable interference with a [claimant's] land or his use or enjoyment of that land"

Only those who have a legal interest in the affected land can sue

Public nuisance concerns protecting the public private nuisance, which protects an individual.

SLIDE 4:

private nuisance, the claimant must show that the defendant's actions caused damage. or discomfort and inconvenience.

if a landowner knows or ought to know that their property may cease to support another's, they are required to take reasonable precautions or they will be liable. The test is whether or not the nuisance was reasonably foreseeable; if it was, the defendant is expected to avoid it if the defendant was using their land unreasonably and causing a nuisance, the defendant is liable even if they used reasonable care to avoid creating a nuisance. An occupier can also be liable for an interference that is naturally arising, assuming they are aware of the interference's existence and fail to take reasonable precautions,

SLIDE 5 character of an area

Wheeler v Saunders Ltd [1994] EWCA Civ 32 is an English Court of Appeal case on nuisance which amended the precedent set by Gillingham Borough Council v Medway (Chatham) Dock Co Ltd.[1] Wheeler was a veterinary
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surgeon who owned Kingdown Farm House; the wider farm was owned by J. J. Saunders Ltd, who used it for raising pigs. After Saunders gained planning permission for a pair of pig houses, Wheeler brought an action in nuisance, alleging that the smell of the pigs interfered with his use and enjoyment of the land. When the case went to the Court of Appeal, Saunders argued that the granting of planning permission for the pig houses had changed the nature of the area, as in Gillingham, making the nuisance permissible. The Court of Appeal rejected this argument, holding that a pair of pig houses was not a sufficient development to change the nature of an area; the centre of the Gillingham case had been a commercial dock, which was a sufficient development.

where it was held that the granting of planning permission had changed the area in such a way that what would previously have been a nuisance was not. The defendants argued that the granting of planning permission for their pig houses authorised the nuisance in line with Gillingham.[6] This argument was rejected by the Court of Appeal, which held that the granting of planning permission for a pair of pig houses did not alter the area in the same way that the granting of planning permission for a commercial dock had in Gillingham.[7]

SLIDE 6 The Lords held that because the quantities of water from an ordinary pipe is not dangerous or unnatural in the course of things, the council was not liable. Lord Hoffmann, however, remarked on the irony that had the pipe belonged to a 'water undertaker' s. 209 Water Industry Act 1991 creates strict liability unless (with further irony) the loss is to a Gas Act 1986

company. Their Lordships protected the rule in Rylands v. Fletcher but within <https://assignbuster.com/nuisance-tort-and-planning-permission-essay-sample/>

strict confines. The escape must be of something dangerous, out of the ordinary, which did not include a burst waterpipe on council property. Unlike the Australian High Court, whose abolition of the doctrine in *Burnie Port Authority v. General Jones Pty* (1994) 179 CLR 520 was given severe doubt, their Lordships stated their purpose, to retain the rule, while insisting upon its essential nature and purpose; and to restate it so as to achieve as much | | certainty and clarity as is attainable, recognising that new factual situations are bound to arise posing difficult questions on the boundary of the rule, wherever that is drawn.[1]

Slide 7 *Caparo Industries plc v Dickman* [1990] 2 AC 605; This concerned an auditor (Dickman) who had negligently approved an overstated account of a company's profitability. A takeover bidder (Caparo) relied on these statements and pursued its takeover on the basis that the company's finances were sound. Once it had spent its money acquiring the company's shares, and company control, it found that the finances were in poorer shape than it had been led to believe. Caparo sued the auditor for negligence. The House of Lords however held that there was no duty of care between an auditor and a third party pursuing a takeover bid. The auditor had done the audit for the company, not the bidder. The bidder could have paid for and done its own audit. Consequently there was neither a relationship of "proximity" nor was it "fair, just and reasonable" to make the auditor liable for the lost sums of money that the takeover incurred.

For that tort, there is no requirement that the dangerous thing collected by the tortfeasor must escape directly onto the victim's land or property. It is sufficient if, as a result of its escape, damage is caused to the victim.
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