Public nuisance

Online content

INTRODUCTION

An inconsistent definition

Public nuisance is probably the most inconsistently-defined of all the torts. This undoubtedly reflects its rather imprecise historical origins. Lord Denning stated, more than 50 years ago in Morton v Wheeler, that ‘the tort of public nuisance is a curious mixture. It covers a multitude of sins.’ More recently, in R v Rimmington; R v Goldstein, Lord Rodger admitted that the tort of public nuisance ‘applied to a number of disparate situations at a time when there was no perceived need to define its boundaries very precisely.’ Part of its disparity is that (as Lord Bingham noted in Rimmington), private nuisance could not cope with numerous ‘socially objectionable’ activities, ‘because the injury was suffered by the local community as a whole rather than by individual victims, and because members of the public suffered injury to their rights as such, rather than as private owners or occupiers of land.’ Hence, the tort was something of a ‘wide-ranging gap-filler’, and it retains that characteristic to this day.

A composite definition of the tort is as follows:

§PU.1 A public nuisance is committed where D either causes inconvenience or annoyance to, or endangers the life, health, safety, property, comfort and convenience of, the public (or a section of it).

A selection of judicial definitions shows just how imprecise and broad-ranging the tort is, in order to cover the so-called ‘multitude of sins’. A public nuisance:

is an act or omission which is an interference with, disturbance of, or annoyance to, a person in the exercise or enjoyment of ... a right belonging to C as a member of the public (Dobson v Thames Water Utilities Ltd);

is [an act] which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects (AG v PYA Quarries Ltd);
[occurs where D] (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property, or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects (R v Rimmington). 

The framework

The framework of analysis for public nuisance is set out in the following nutshell analysis:

**Nutshell analysis: Public nuisance**

*Preconditions for the tort to apply:*

i. Capacity of C to sue
ii. Capacity of D to be sued
iii. A threshold level of inconvenience must be suffered to be actionable

*Elements of the tort:*

1. There was an actionable interference by D
2. D knew of, or should reasonably have foreseen, the interference
3. The interference affected the public (or a sub-section of it)
4. The interference caused C 'special damage'

*Defences:*

The defences available in Private Nuisance (minus prescription)

**Parallel actions**

In a wider context, public nuisance may appear alongside other claims, especially for negligence, breach of statutory duty, private nuisance, and statutory nuisances.

Notably, public nuisance (also called ‘common nuisance’ in this context) is a criminal offence – precisely because such acts affect the whole public, and are actionable at the suit of the Attorney General (AG) on the public's behalf – and it only becomes a civil tort at C's suit, if C suffers 'special damage' (per Jan de Nul (UK) Ltd v NV Royale Belge). Criminal public nuisances may give rise to lengthy sentences. Interestingly, the argument arose, in Rimmington, that the crime of public nuisance was so uncertain and unpredictable in ambit that it offended both the common law – because 'no one should be punished under a law unless it is sufficiently

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6 (2005) UKHL 63, [10], [36], and derived from the definition of public nuisance in Archbold Criminal Pleading, Evidence and Practice, at [31-40]; although Lord Bingham excluded the reference to ‘morals’ from the list of endangered things. Cited in: DPP v Fearon [2010] EWHC 340 (Admin) [6].

7 Common nuisances were public nuisances which were not prosecutable. Hence, while all public nuisances are common, not all common nuisances are public nuisances, but they came to be regarded as virtually synonymous: Rimmington [2005] UKHL 63, [44] (Lord Rodger).


9 See, e.g.: R (on the application of Bourgass) v Sec of State for Justice [2011] EWHC 286 (Admin) (17 years’ imprisonment for conspiracy to commit public nuisance, re the Wood Green Ricin terrorist conspiracy, and the use of poisons and/or explosives).

10 (2005) UKHL 63, [1], [33]–[34].
clear and certain to enable him to know what conduct is forbidden before he does it; and no one should be punished for any act which was not clearly and ascertainably punishable when the act was done’ – and it also breached Art 7(1) of the ECHR: ‘No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.’ That argument, however, failed. The offence of public nuisance was (according to Lord Bingham), ‘clear, precise, adequately defined, and based on a discernible rational principle’.\(^\text{11}\) However, as seen throughout this chapter, the wide ambit that has characterised the crime of public nuisance has infected the tort with the same lack of certainty.

Public nuisance-type offences have also figured in numerous statutory enactments. A few examples in the Table below (many of which are mentioned by Lord Bingham in *Rimmington*\(^\text{12}\)) suffice to show the range of areas of public nuisance in which Parliament has taken an active interest:

### Statutory nuisance provisions – a sample

- preventing a public nuisance is one of the (four) statutory licensing objectives under the Licensing Act 2003;\(^\text{13}\)
- many statutory nuisances are created by the Environmental Protection Act (EPA) 1990, s 79(1) (discussed later in the chapter\(^\text{14}\));
- anti-social behaviour orders may be obtained under s 1(1) of the Crime and Disorder Act 1998; or closure orders of premises, per s 2 of the Anti-social Behaviour Act 2003 from which nuisance-creating activities are being conducted (e.g., drug-related activities in a flat); or possession orders of houses let under secure tenancies, per s 84A of the Housing Act 1985; or wherever breaches of abatement notices or court orders re statutory nuisances under the EPA 1990 have occurred (inserted by the Anti-social Behaviour, Crime and Policing Act 2014);
- pollution of controlled waters is an offence under s 85 of the Water Resources Act 1991;
- wilfully obstructing free passage along a highway is an offence under s 137 of the Highways Act 1980;
- rave parties (re ‘gathering on land in the open air of 100 or more persons (whether or not trespassers) at which amplified music is played during the night’ are dealt with per the Criminal Justice and Public Order Act 1994, s 63;
- if statutory nuisances arise under the EPA 1990 for which an aggrieved person commences proceedings, in respect of the crossrail works, then a defence, and exclusion from fine, may be available to the relevant contractor, under s 21 of the Crossrail Act 2008;
- the Environmental Damage (Prevention and Remediation) Regs 2009 implemented Directive 2004/35/EC, and provide for identification, prevention, enforcement and rectification of ‘environmental damage’ (defined in reg 4);
- s 158 of the Planning Act 2008 provides statutory immunity for public nuisances which arise from authorised activities for nationally-significant infrastructure projects, such as airports and power stations.

\(^{11}\) *ibid*, [36].\(^\text{12}\) *ibid*, [29].

\(^{13}\) Per s 42(1)(c). The others are: prevention of crime/disorder, public safety, and protection of children from harm.\(^\text{14}\) Cross cite pp 418–19.
The extensive reach of statute into areas of nuisance-making activities which affect the general public (or a section of it) rather calls into question whether there is any need for a crime, or tort, of public nuisance in modern law. Lord Bingham made that point in \textit{Rimmington},\textsuperscript{15} when he said that it is up to Parliament to abolish the crime of public nuisance if it so wishes, the House of Lords cannot do that; but that instances of that crime may well be rare, in light of the lengthy list of statutes which can ‘do the job’ instead; and given the need to uphold the importance of statute (‘good practice and respect for the primacy of statute ... require that conduct falling within the terms of a specific statutory provision should be prosecuted under that provision, unless there is good reason for doing otherwise’).\textsuperscript{16} In any event, \textit{Rimmington} itself demonstrates how common law public nuisance continues to have a role to play.

In \textit{R v Rimmington; R v Goldstein}, Mr Rimmington, R, sent 538 packets of racist, insulting, threatening and obscene literature to various recipients (including some prominent public figures) by post, over the course of nine years. Mr Goldstein, G, put salt into a packet to be sent through the post to his friend, as a joke, but some of it spilt out at the Wembley postal sorting office. Both R and G could have been charged under either the Malicious Communications Act 1988 (which makes it an offence to send another person a letter, electronic communication or article of any description which conveys a message which is indecent or grossly offensive, or which conveys a threat or information which is false and known or believed to be false), or under the Postal Services Act 2000 (which makes it an offence to send by post a packet enclosing anything which is likely to injure a postal worker or which is indecent or obscene). However, some of the acts carried out would have been time-barred under those statutes; and the maximum sentence possible under the Acts was more lenient than what a court may have ordered for the crime of public nuisance. Hence, the latter was pursued, but ultimately unsuccessfully, for reasons explored later in this chapter.

\textbf{PREREQUISITES FOR THE TORT}

\textbf{Precondition #1: The capacity of C to sue}

\textbf{Where C is a member of the public}

Unlike in the tort of private nuisance, C does not need to have a proprietary or possessory right to sue in public nuisance.

Although public nuisance generally concerns claims by people who complain of an interference with the use and enjoyment of land which they own or occupy, the tort is not confined to those scenarios. Those who claim an interference with the use of a public highway or a navigable river will typically have no relevant proprietary right in that public thoroughfare, and yet they may sue in public nuisance. Furthermore, a member of the public who complains of some interference of noise or smell which is a public nuisance can recover for it, whether or not that member has a proprietary or possessory interest in the land where the interference occurs.

In \textit{Jan de Nul v NV Royale Belge},\textsuperscript{17} major dredging works were carried out at Southampton, to deepen and straighten the main shipping channel. As a result, substantial amounts of suspended soil and silt were put into the water; and the tide then deposited the solids in parts of the estuary.

\textsuperscript{15} [2005] UKHL 63, [2006] 1 AC 459, with quote at [30], and see [29]–[31].

\textsuperscript{16} Re a debate re the primacy of statute versus the common law offence of cheating the public revenue, see: \textit{Dosanjh v R} [2013] EWCA Crim 2366, [2014] WLR 1780.

\textsuperscript{17} (QB Comm Ct, 31 Jul 2000, Moore-Bick J), aff’d: [2001] EWCA Civ 209.
which caused problems for many who used those estuary waters. Remedial works cost more than £2.5M. The claimants included: commercial wharf operators who could not necessarily prove title to the relevant docks; commercial fishermen who harvested clams and oysters in various parts of Southampton waters and who did not own the riparian waters or seabeds where they fished; and yacht clubs and boat-owners who held mooring licences, which did not give them a proprietary interest in those structures, but merely mooring permissions which could be revoked at any time. Nevertheless, each had sufficient interest to sue in public nuisance.

§PU.3 C is entitled to bring civil proceedings for public nuisance, if it has caused him to suffer ‘special damage’, over and above that suffered by the public at large.

The need for ‘special damage’ (or ‘particular damage’) has deep historical roots (per Lord Bingham in Rimmington18):

central to the content of the crime [of public nuisance] was the suffering of common injury by members of the public by interference with rights enjoyed by them as such ... Since, in the ordinary way, no individual member of the public had any better ground for action than any other member of the public, the Attorney General assumed the role of plaintiff, acting on the relation of the community which had suffered. This was attractive, since he could seek an injunction, and the abatement of the nuisance was usually the object most desired ... It was, however, held by Fitzherbert J, as early as 1536 (YB 27 Hy VIII Mich pl 10) that a member of the public could sue for a common or public nuisance if he could show that he had suffered particular damage over and above the ordinary damage suffered by the public at large.

The modern tort of public nuisance reflects that historical treatment. In modern parlance, to be ‘special damage’ in public nuisance, C’s damage must be ‘particular, direct and substantial’, over and above that suffered by the public at large. This requirement is considered further under Element #4.

Standing to sue for the Attorney General or a local authority

The Attorney General can seek an injunction to restrain the commission of a public nuisance by means of a relator action. Alternatively, pursuant to s 222 of the Local Government Act 1972, local authorities have vested in them the procedural power to bring an action for public nuisance.

Section 222(1) provides:

Where a local authority considers it expedient for the promotion or protection of the interests of the inhabitants of their area – (a) they may prosecute or defend or appear in any legal proceedings and in the cases of civil proceedings may institute them in their own name.

Prior to the enactment of s 222, only the Attorney General (AG) could seek an injunction to restrain a public nuisance on behalf of members of the public, in what was known as a ‘relator action’; and a local authority could only sue in the AG’s name, provided that it obtained the AG’s fiat19 (‘a rarely used procedure, fraught with difficulties’, per Herrick v Kidner20). As the

18 [2005] UKHL 63, [2006] 1 AC 459, [6]–[7].
19 A ‘fiat’ is ‘an order or decree by a judge or the Attorney-General, on behalf of the Crown, for certain proceedings to begin’; it is Latin for, ‘let it be done’: Butterworths Concise Australian Legal Dictionary (Butterworths, 1997) 157.
20 [2010] EWHC 269 (Admin) [43].
House of Lords noted, in *Gouriet v Union of Post Office Workers*,21 ‘a relator action – a type of action which has existed from the earliest times – is one in which the Attorney-General, on the relation of individuals (who may include local authorities or companies), brings an action to assert a public right’, and that relator actions for public nuisance ‘have been known for 200 years.’

In *AG v PYA Quarries Ltd*,22 a civil action was brought in the name of the AG, whereby the Glamorgan CC and the Pontardawe Rural DC obtained the AG’s fiat to put a stop to the public nuisance (by vibrations, dust, flying stones) generated by D’s public quarry in the County of Glamorgan.

However, once s 222 was enacted, a local authority could seek an injunction on behalf of its residents, in its own name, and without the AG’s consent.

The section has been useful where a public nuisance is allegedly being suffered by residents in a local authority’s borough, and that council seeks injunctive relief to stop its commission. According to *Nottingham CC v Zain*,23 whether the proceedings are ‘expedient’, as s 222 requires, can be subject to judicial review; whether the local authority can establish that a public nuisance exists is for the court to decide, based upon all the evidence; and then the court will need to exercise its discretion as to whether or not an injunction should be granted, in accordance with the usual principles governing injunctive relief. An action pursuant to s 222 has proven constructive in a range of public nuisance cases, as the Table below shows.

**THE UTILITY OF s 222 FOR PUBLIC NUISANCE**

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
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<tbody>
<tr>
<td>City of London Corp v Bovis Construction Ltda</td>
<td>the Corporation obtained an injunction to stop construction work being carried out by Bovis which constituted a public nuisance</td>
</tr>
<tr>
<td>Nottingham CC v Zainb</td>
<td>the Council obtained an injunction restraining Z from entering a housing estate, on the basis that Z was associating with well-known drug dealers, and that he had been arrested on suspicion of drug dealing on the estate</td>
</tr>
<tr>
<td>Birmingham CC v VBc</td>
<td>the Council obtained an injunction restraining eight people from entering parts of the Birmingham city centre, on the basis of their involvement in dealing in Class A drugs</td>
</tr>
<tr>
<td>East Dorset DC v Eaglebeam Ltdd</td>
<td>the Council obtained an injunction to stop the public nuisance created by D’s motocross circuit</td>
</tr>
<tr>
<td>Mid Suffolk DC v Clarkea</td>
<td>the Council obtained an injunction to restrain Mr Clarke from causing a public nuisance by smell, emanating from his pig farm</td>
</tr>
<tr>
<td>Gillingham BC v Medway (Chatham) Dock Co Ltde</td>
<td>the Council sought, but failed to obtain, an injunction to stop the operation of a 24-hour port which caused serious disturbances (noise, vibration, dust and fumes) to nearby residents</td>
</tr>
</tbody>
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22 [1957] 2 QB 169 (CA) 190–92 (Denning LJ).
23 [2002] 1 WLR 607 (CA) [27] (Keene LJ), and see too [14]–[17] (Schiemann LJ).
Notably, before a local authority commences a s 222 action, there must be evidence which either expressly or by inference enables the court to conclude that the statutory pre-condition for bringing the action – that it would be ‘expedient for the promotion or protection of the interests of the inhabitants of its area’ to bring proceedings for an injunction to stop the nuisance – has been taken into consideration by the local authority.

In *East Dorset DC v Eaglebeam Ltd*, the Council brought a s 222 action on behalf of residents who lived near to Matcham Park, a recreational area five miles north of Bournemouth, at which noisy motor-racing activities, from D’s motocross circuit, were held. The Park had been in existence since the 1920’s, and the area around it had gradually been built up, so that there came to be a substantial number of houses in the near vicinity of Matcham Park. The Council alleged that D’s activities constituted a public nuisance. The statutory precondition in s 222 was challenged. *Held*: the Council had justifiably formed the view that there would be considerable delays in prosecuting breaches of the abatement notices issued against D re his motocross circuit; that the remedy for an offence under s 80(4) of the Environmental Protection Act 1990 would not be expedient or adequate for this continuing nuisance; and that the noise generated by the motocross track was adversely affecting numerous residents in the locality, sufficient to bring the s 222 action.

Significantly, either the AG or a relevant local authority can institute a public nuisance action as a relator action, if C, a member of the public, is unable to prove any special damage – but only if the AG or the Council is prepared to sanction the action. Hence, the advantage of proving special damage is that members of the public are enabled to sue in their own names, without requesting another to bring a relator action.

### Precondition #2: The capacity of D to be sued

§PU.5 As a general rule, the person who creates, adopts or continues a public nuisance may be sued.

The relevant rules governing ‘Capacity of D to be sued’ in Chapter 16, with respect to those who create, adopt or continue a private nuisance, apply to public nuisance too.

**Highway authorities**

§PU.6 Whilst a highway authority can be liable for *creating* a public nuisance on a public highway, it cannot be liable for *continuing* a public nuisance which it did not create on that highway.

Where a highway authority, D, creates a nuisance (i.e., an obstruction or an interference) on a public highway, D can be liable at common law for public nuisance (dicta in *Ali v Bradford MDC*). However, if, say, D does not clear a public footpath of mud, overgrown vegetation and other debris, and C, a member of the public, slips on that public footpath and is injured, then D is merely continuing the public nuisance, without creating it. D cannot be liable for continuing that nuisance, for three reasons (according to the Court of Appeal in *Ali*):

- given that the Highways Act 1980 contains specific provisions dealing with a highway authority’s duties and powers to remove existing obstructions, and establishes a method for

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24 [2006] EWHC 2375 (QB) [7]–[14].

25 [2010] EWCA Civ 1282, [2012] 1 WLR 161 (CA) [33]–[39], which includes the reasoning in the text.
enforcement of those duties, C is not without a statutory remedy. Hence, the common law does not have any gap to fill. Indeed, a duty on a highway authority to remove obstructions has never existed at common law (per Haydon v Kent CC,\textsuperscript{26} Goodes v East Sussex CC,\textsuperscript{27} and Gorringe v Calderdale MBC\textsuperscript{28});

- as discussed in ‘Breach of statutory duty’ (an online chapter), Parliament did not intend that a breach of a highway authority’s duty under the Highways Act to remove obstructions should give rise to a private action for damages for breach of statutory duty. Thus, if a highway authority could be liable in damages via an action in public nuisance, that ‘would be to use a blunt instrument to interfere with a carefully regulated statutory scheme, and would usurp the proper role of Parliament’.\textsuperscript{29} Moreover, to compel highway authorities to carry out regular precautionary inspections of all public footpaths to ensure that they were kept free from mud, debris and other obstructions would have substantial economic implications for local authorities, and Parliament had not suggested that such burdens should be borne by highway authorities;

- under the common law principle in Sedleigh-Denfield v O’Callaghan,\textsuperscript{30} an occupier of land ‘continues’ a private nuisance if, with knowledge that the interference exists, he fails to take any reasonable means to bring it to an end when he had the time and resources to do so – but that case concerned a nuisance continued by a private landowner towards his neighbour. The principle cannot be translated to the relationship between a highway authority and highway users – ‘[it] is not to compare like with like’.

The vicariously-liable D

An employer can be vicariously liable for the public nuisance committed by an employee, whether that public nuisance is prosecuted as a crime or as a tort.

The general common law rule is that ‘there is no vicarious responsibility in crime’. However, public nuisance has long been an exception to that general rule (per Mosley v News Group Newspapers Ltd\textsuperscript{31}).

Furthermore, the employer who is vicariously liable may not know of the public nuisance committed by his employee, nor have means of knowing of it; and yet the employer will still be vicariously liable. The \textit{mens rea} requirement (i.e., knowledge or foreseeability) which normally applies to public nuisance defendants may not be satisfied for the vicariously-liable defendant. As Lord Bingham noted in Rimmington, the lack of \textit{mens rea} for a vicariously-liable defendant is ‘hard to reconcile with the modern approach to [public nuisance]’,\textsuperscript{32} but that is the law. This contentious point is further examined under Element #2.

Precondition #3: The threshold principle

Public nuisance applies a threshold principle, whereby some limited or temporary interference may have to be borne by C without any cause of action being possible. On the other hand, there is less tolerance for the principle of ‘give and take’ than is evident in the tort of private nuisance.

Although the threshold principle has been particularly espoused in the context of obstructions to highways, it is of general application in the tort of public nuisance. In *R v Rimmington; R v Goldstein*, Lord Bingham referred to the infliction of some ‘significant injury’ on the public or a section of it, while other jurisprudence refers to public nuisance as ‘impact[ing] disproportionately and unreasonably’ on a section of the public (*R on the Application of Festiva Ltd v Highbury Corner Magistrates Court*).

Where the usage of roads and footpaths is concerned, there has always been some degree of ‘give and take’ in the tort of public nuisance. For example, it is not a public nuisance to park vehicles on a road, or to create other obstructions which do not cause significant inconvenience or danger to other roadusers. Nor is it a public nuisance for people who live next to a road to make reasonable use of it, in order to load or unload goods at their premises, even if some inconvenience may be caused to the public by these activities. These can properly be regarded as ‘reasonable incidents of such passage’ (per *Westminster CC v Ocean Leisure Ltd*).

Building works adjacent to a road or public footpath have long created tensions in public nuisance, but again, some minimal level of inconvenience must be tolerated, before the tort of public nuisance will intervene. For example, in *Hiscox Syndicates Ltd v The Pinnacle Ltd* (a case arising out of the construction of the highrise building, the Pinnacle, at Bishopsgate, London) Akenhead J stated that it is ‘eminently arguable that reasonable, temporary obstruction of the highway is or may be allowable before it becomes a public nuisance’; that it would always be a question of fact and degree; and that it would also depend upon what steps D took to mitigate the consequences of his obstruction of the highway. Clearly, a builder can lawfully erect hoardings, to a reasonable extent and for a reasonable time, in connection with building works being carried out on premises adjoining a road, as hoardings can be seen as an appropriate measure to protect the public from harm during building works (*Harper v Haden & Sons Ltd*). However, where those hoardings interfere in substantial measure and over a substantial period of time with the public’s right of passage, that will constitute an actionable public nuisance. There is certainly no special rule that protects D against public nuisance actions, where hoardings are placed around a building site (*Westminster CC v Ocean Leisure Ltd*).

In *Westminster CC v Ocean Leisure Ltd*, Ocean Leisure, C, operated a retail business selling sailing and diving equipment near the Thames Hungerford Footbridge in London. Two areas of the footpath adjacent to C’s premises were enclosed by hoardings by the Council, D – one surrounded the work site for constructing steps to the footbridge, and the other was used to store equipment. Both were in close vicinity to C’s shop. Public access to the shop entrances was maintained, but substantially impeded, and C’s trade was severely affected. **Held:** a public nuisance was proven.

Once the threshold of substantial interference is met so as to establish a public nuisance, interferences arising from such public nuisances are not subject to ‘the rule of give and take’ which applies to private nuisances. Rather any obstruction of the highway which would amount to a public nuisance cannot be carried out at all by D; or can only be carried out with a statutory

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37 [1933] Ch 298 (CA) 302.  
authority, in which case the statute which legitimises the public nuisance then may give rise to a claim for compensation (per *Wildtree Hotels Ltd v Harrow LBC*\(^{39}\)).

Turning now to the four elements of the tort:

**ELEMENT #1: AN ACTIONABLE INTERFERENCE**

**Types of public nuisances**

In line with the vast array of ‘socially objectionable’ acts and omissions to which Lord Bingham referred in *Rimmington*\(^{40}\) (which could cause a public nuisance in earlier times), the conduct which may give rise to a modern public nuisance is multifarious.

**Obstruction of, or interferences with, roadways or other public thoroughfares**

Any total or substantial obstruction of, or interference with, C’s use of a highway (or any public right of way, such as a river) by D, which unreasonably impedes the right of the public to pass along that thoroughfare, or which exposes those using the thoroughfare to injury, will constitute a public nuisance.

Members of the public (including those who live on or near the thoroughfares) have a right to pass along, and use, a highway, riverway, or other public thoroughfare, for any lawful purpose, and any interference with that right will give rise to a cause of action in public nuisance. This is a longstanding, and probably the most common form of, public nuisance. The obstruction of a bridleway or footpath can also give rise to a public nuisance, as places of public thoroughfare (per *Mear v Cambridgeshire CC*\(^{41}\)).

The obstruction or interference does not have to be total – ‘anything which substantially prevents the public from having free access over the whole of the highway which is not purely temporary in nature is an unlawful obstruction’ (per *Seekings v Clarke*\(^{42}\)). Additionally, the cause of action does not only relate to physical obstructions – anything which makes the public’s use of a road substantially less convenient will suffice (per *Nottingham CC v Zain*\(^{43}\)).

Public nuisances under this category can arise from a variety of circumstances – as the following examples demonstrate:

### PUBLIC THOROUGHFARE NUISANCES: EXAMPLES

<table>
<thead>
<tr>
<th>The source of obstruction or interference</th>
<th>Case example</th>
</tr>
</thead>
<tbody>
<tr>
<td>a street protest or demonstration which impedes the public’s access along the street</td>
<td>In <em>City of London v Samede,</em>(^{4}) a group of protestors, D set up a protest camp in the grounds of St Paul’s Churchyard, and on an adjoining roadway, on 15 and 16 Oct 2011. There were a large number of tents (100–200), used by protestors as overnight accommodation, and several larger tents used for other activities such as library, first aid facility, and a welfare facility. Graffiti was inscribed on the surface of the road and on buildings, and some protestors urinated and defecated on the road. <em>Held:</em> a public nuisance was proven. The obstruction of</td>
</tr>
</tbody>
</table>

\(^{39}\) [2001] 2 AC 1 (HL) 14 (Lord Hoffmann).  
\(^{40}\) [2005] UKHL 63, [2006] 1 AC 459, [6].  
\(^{41}\) [2006] EWHC 2554 (Ch) [101].  
\(^{42}\) (1961) 59 LGR 268 (Div Ct, 1 Jan 1961) (Lord Parker CJ), cited *ibid,* [101].  
\(^{43}\) [2002] 1 WLR 607 (CA).
## PUBLIC THOROUGHFARE NUISANCES: EXAMPLES

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<td>public thoroughfares was substantial, and injunctive and declaratory relief was awarded.</td>
<td>In <em>Olympic Delivery Authy v Persons Unknown</em>,(^b) the ODA, C, was redeveloping land known as Porter’s Field as a basketball practice facility for the London Olympic Games. A number of residents opposed that redevelopment, formed a group, ‘Save Leyton Marsh’, and held a number of rallies. During some of these, public access routes to the site were temporarily blocked, so that lorries and delivery vehicles could not get through, stopping construction works. <strong>Held:</strong> a public nuisance proven. Interim injunctive relief was awarded.</td>
</tr>
<tr>
<td>explosions or fires which cause smoke to drift across a road or other public thoroughfare</td>
<td>In <em>R v Price</em>,(^c) a dispute arose as to whether a body could be burnt on an open air pyre instead of buried at funeral proceedings, in accordance with personal or religious beliefs. <strong>Held:</strong> Stephen J directed the jury that burning instead of burying a body does not commit a criminal act, unless it amounts to a common law public nuisance – ‘[t]o burn a dead body in such a place and such a manner as to annoy persons passing along public roads or other places where they have a right to go is beyond all doubt a nuisance, as nothing more offensive to both sight and to smell can be imagined.’ In <em>Colour Quest Ltd v Total Downstream UK plc</em>,(^d) a massive explosion of petrol vapour at the Buncefield oil depot caused widespread destruction and debris to many residential and business properties around the site, especially in the Hemel Hempstead area. Following the explosion, the public were obstructed in using roads and footpaths around the Buncefield site, because of an exclusion zone imposed. <strong>Held:</strong> D accepted that a public nuisance occurred.</td>
</tr>
<tr>
<td>parking or operating vehicles on a road on a frequent or permanent basis which causes inconvenience</td>
<td>In <em>Gillingham BC v Medway (Chatham) Dock Co Ltd</em>, the Council failed to obtain an injunction to stop the operation of a 24-hour port which caused serious disturbances to nearby residents, particularly with the noise, vibrations and dust created by heavy goods vehicles using nearby residential streets to access the port (it was described by Buckley J as a ‘classic public nuisance’, but the defence of planning permission meant that the action failed, as discussed in ‘Private nuisance’, Chapter 16). In <em>Dymond v Pearce</em>,(^e) Mr Pearce, D, a lorry driver, parked his lorry on the side of a major divided road, beneath a street lamp where it was well visible, from 6pm to 3am, in readiness to make a long journey the next day (he lived on a nearby narrow street, and the lorry could not fit there). It was more convenient to do that, than to pick it up from his employer’s premises early next morning. D also turned on the tail-lights when lighting-up time came that night. Mr Dymond, C, a motorcyclist, ran into the lorry at 9.45pm one bank holiday, causing him and his pillion passenger serious injury. <strong>Held:</strong> a public nuisance was caused by the obstruction in the road. It reduced the width of the road to a mere 16 ft, making it hazardous for traffic to overtake (but causation failed, hence the action as a whole failed).</td>
</tr>
</tbody>
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\(^b\) [2012] EWHC 1012 (Ch).
\(^e\) [1972] QB 496 (CA).
### PUBLIC THOROUGHFARE NUISANCES: EXAMPLES

<table>
<thead>
<tr>
<th>The source of obstruction or interference</th>
<th>Case example</th>
</tr>
</thead>
<tbody>
<tr>
<td>In <em>AG v Gastonia Coaches Ltd,</em> Gastonia, D, ran a bus business from premises situated in a row of houses in a residential area, adjoining a common. Space was very limited, and 15 buses and 3 mini-buses were parked at the premises overnight. The rest of the 32 buses were parked elsewhere, but all came to D’s premises from time to time for servicing, refuelling, etc. The buses had to warm up their engines for the morning and afternoon school runs, and the drivers regularly parked their own cars on the road, and the buses were regularly parked in the road overnight or during the day, virtually reducing the road to one lane. At times, the vehicles obstructed access to the residences in the street. <strong>Held:</strong> a public nuisance was proven, in relation to obstruction of the highway from the parked vehicles, given how much the buses restricted the width of the road. The blocking of access to residences could have constituted a public nuisance, but the evidence here did not support it.</td>
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<tr>
<td>In <em>Lovell v Leeds CC,</em> it was argued that a highway authority could be liable in public nuisance if it authorised roadworks (e.g., the construction of a roundabout) which resulted in a stationary queue of cars forming on a blind bend in the road when traffic was heavy. The roadworks caused D to brake suddenly (to avoid crashing into the end of the queue), and thereby locked the wheels, and crossed over the median strip, meeting C head-on. C suffered serious injury. <strong>Held:</strong> ultimately, no negligence was proven, and public nuisance was not addressed.</td>
<td></td>
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<tr>
<td>In <em>Tate &amp; Lyle v GLC,</em> sugar manufacturers Tate &amp; Lyle, C, had built two jetties in the River Thames to access its sugar refinery. Access by vessels of a certain size to these jetties was affected by the silting up of the Thames river bed, which was caused by construction of adjacent terminals for the Woolwich ferry. C had to incur dredging expenses to enable the vessels to reach its jetties. <strong>Held</strong> (by majority): a public nuisance was proven.</td>
<td></td>
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<tr>
<td>In <em>R v Lister,</em> D owned a warehouse which was situated close to a road, and in which it kept large quantities of a flammable and explosive fluid, wood naptha. The public were very worried about the danger to their lives and property in passing along the street, fearing explosion or the damage that would be done to the neighbourhood if a fire broke out in the warehouse. <strong>Held:</strong> a public nuisance was proven. In <em>Nottingham CC v Zain,</em> facts previously, <strong>held:</strong> the activities of drug dealers affected roads around a housing estate, making passage along those roads undesirable. In <em>Wandsworth LBC v Railtrack plc,</em> pigeons were inclined to roost under a bridge owned by Railtrack, and to foul the footpath below with their droppings. <strong>Held:</strong> a public nuisance was caused by this inconvenience.</td>
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* [1977] RTR 219 (Ch).  
* [2009] EWHC 1145 (QB) [174]–[175].  
* [1983] 2 AC 509 (HL) 543–44.  
* [2002] QB 756 (CA).  

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Obstruction of access to/from C’s premises from the roadway or river

§PU.10  A public nuisance will arise where D’s activities obstruct (owner of the property), or C’s employees or customers, from accessing C’s premises from a road, river or other public thoroughfare.

The access of C (and his employees) from his premises, to and from a road or public thoroughfare which services those premises, has long been considered to be a right which the tort of public nuisance will protect. In Hiscox Syndicates Ltd v The Pinnacle Ltd, the court referred to an inalienable frontager’s right – under which the owner or tenant of land which adjoins a road has a right of access to that road from any part of his premises.

Whether public nuisance also encompasses his customers’ access, permitting C to recover for lost trade and business income caused by D’s interference, has been more controversial. However, that proposition was approved in Colour Quest Ltd v Total Downstream UK plc, and was said to derive from ‘longstanding and consistent authority’.

Hence, whether the interference causes obstructions to C’s customers or employees, the position is the same: access for both is protectable in public nuisance – as the following cases show, in all of which public nuisance was proven:

In Fritz v Hobson, C was a shopkeeper and tailor in Fetter Lane, London. Adjacent premises were being rebuilt. An old hall had been destroyed by fire, and a new larger hall was constructed by D, which involved busy building works (including the delivery of over 200,000 bricks), and which prevented customers reaching C’s shop, thereby reducing C’s average takings. In Benjamin v Storr, the passage of customers to C’s coffee house was obstructed by the loading and unloading of chattels from horse-drawn vans at the auctioneers next door to C’s premises. In Couper v Albion Properties Ltd, the Couper Collection Charitable Trust, D, housed its arts collection on a series of barges, pontoons and boats, permanently moored off the Albion Wharf in the Thames. The presence of those vessels impeded navigation in the Thames, and meant that Albion Properties, who owned the river wall and property adjacent to the river there, could not access their property, which constituted a public nuisance.

The rest of this section considers other types of actionable interferences. In Jan de Nul (UK) Ltd v NV Royale Belge, Moore-Bick J noted that public nuisance ‘is most commonly encountered in the context of obstruction of the highway or of a navigable waterway interfering with the public right of passage, but ... the scope of public nuisance is wide’. This is borne out by the following examples.

Widespread private nuisance interferences (e.g., noise, smells, litter)

§PU.11  Some English law supports the proposition that public nuisances can arise from private nuisance-type grievances which occur on a large scale and which affect an entire neighbourhood. However, other such cases have been treated as private nuisances which affect a large number of people. English authorities are inconsistent on this point.

47 See too: Caledonian Rwy Co v Walker’s Trustees (1881–82) LR 7 App Cas 259 (HL) 273.
48 (1880) LR 14 Ch D 542.  49 (1874) LR 9 CP 400.  50 [2013] EWHC 2993 (Ch) [541]–[542].
51 (QB, Comm Ct, 31 Jul 2000) [96], aff’d: [2001] EWCA Civ 209.
Whether widespread private nuisances can properly be treated as public nuisances has become somewhat blurred and uncertain in English case law.

Certainly, on one view, this is a means by which a public nuisance can arise. Appellate authority in England has confirmed that, ‘if one were to break it down, the general effect on the community might well be seen to be made up of a collection of private nuisances occurring more or less simultaneously’ (Lord Rodger in *R v Rimmington; R v Goldstein*[^52^]), and that ‘a normal and legitimate way of proving a public nuisance is to prove a sufficiently large collection of private nuisances’ (per Romer LJ in *AG v PYA Quarries Ltd*[^53^]). In *Rimmington*, Lord Bingham cited a number of very early cases of private nuisances, but affecting a large group of the public, which were treated as public (or common) nuisances. More recently still, in respect of the Buncefield oil depot explosion which affected a great many residents and business operators, the court took the view, in *Colour Quest Ltd v Total Downstream UK plc*[^54^], that this could be a public nuisance. Although every property owner has the right to enjoy his own property (and that is not a right enjoyed by him in common with other members of the public), some unlawful interference caused by D could mean an identical interference being contemporaneously suffered by other members of the public (said the court), such that there will be a ‘common injury satisfying the public nature of a public nuisance.’ In that case, there was a common injury to public health and safety caused by the explosion.

Drawing upon both earlier and other more modern examples of this type of public nuisance:

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**WIDESPREAD PRIVATE NUISANCES THAT GIVE RISE TO PUBLIC (OR COMMON) NUISANCES**

<table>
<thead>
<tr>
<th>The source of interference</th>
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</tr>
</thead>
<tbody>
<tr>
<td>exposing the public to the risk of contagious or infectious diseases</td>
<td><em>exposing the public to the risk of smallpox by taking a child with the disease into the street – R v Vantandillo[^a^]</em>&lt;br&gt;• allowing a horse with contagious and dangerous disease to pass along a highway and expose the public (and other owners’ animals) to that disease – <em>R v Henson[^b^]</em></td>
</tr>
<tr>
<td>pollution or contamination of a neighbourhood</td>
<td><em>polluting a river with contaminants – dicta example by Romer LJ in <em>AG v PYA Quarries Ltd[^c^]</em>&lt;br&gt;• permitting the escape and spread of large quantities of contaminated and toxic material, as it was being transported away from D’s old steelworks site (during the reclamation and decontamination programme of a large British Steel site to the east of Corby), via public highways, and without cleaning or sheeting the thousands of lorries being used to transport the waste away from site, and thereby endangering the health of the public. Over time, toxic mud and dust dispersed over extensive public areas of Corby, in and over residential homes in the area. The child claimants in a group action, C, alleged that their mothers were exposed during the embryonic stage of their pregnancies to toxic materials in the course of D’s</em></td>
</tr>
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### WIDESPREAD PRIVATE NUISANCES THAT GIVE RISE TO PUBLIC (OR COMMON) NUISANCES

<table>
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<tbody>
<tr>
<td>works, which caused C various birth defects and deformities</td>
<td><em>Corby Group Litigation v Corby DC.</em>[^d] The contamination of the houses surrounding the site constituted a common injury to the public.</td>
</tr>
</tbody>
</table>
| fumes, dust, smoke, vibrations and other emissions | • permitting phenolic and sulphuric odours, smoke and fumes, and dust and other emissions from D’s management and operation of a foundry business – the subject of a group litigation order in *Anslov v Norton Aluminium Ltd.*[^c]  
• quarrying which causes stones and splinters to be discharged in the neighbourhood, thereby causing dust and vibrations to nearby residents – *AG v PYA Quarries Ltd.*[^f]  
• allowing a fire to seat and burn for years – where D owned land with a large spoil tip at a long-disused colliery, and during the summer, a fire broke out at the flank of the tip, lasting for more than three years, causing smoke and noxious fumes to affect nearby residents – *Anthony v Coal Authority.*[^g] |
| noise and smells | • making various liquors on building premises, which caused noise and offensive ‘stinks and smells’ for nearby residents in Twickenham – *R v White and Ward.*[^d]  
• holding an ‘acid party’ on a farm field over one weekend, which lasted 15 hours, and which created noise for nearby residents up to four miles away – *R v Shorrock.*[^h]  
Similarly, holding an ‘acid house’ party in a residential area, attracting thousands of party-goers, causing a side road to be blocked by traffic, with very loud music for 12 hours, and with surrounding woodlands littered with human excrement – *R v Ruffell.*[^i]  
• allowing a crowd to gather in fields adjacent to a rifle range to shoot escaped pigeons, which caused crowd disturbances, noise and smells – *R v Moore.*[^k]  
• permitting heavy goods vehicles to use residential streets to gain access to/from a busy commercial port, on a 24-hour basis, causing noise, dust and vibrations – *Gillingham BC v Medway (Chatham) Dock Co Ltd.*[^l] (but the claim ultimately failed, because planning permission permitted the nuisance). |

[^c]: (QBD, Crown Ct Leicester, Birmingham District Registry, Flaux J, 26 May 2010).  
[^f]: [1957] 2 QB 169 (CA).  
[^g]: [2005] EWHC 1654 (QB), [2006] Env LR 17, [167].  
[^h]: (1757) 1 Burr 333 (KB) 335–36, 97 ER 338. See too: *R (on the Application of Festiva Ltd) v Highbury Corner Magistrates Court* [2011] EWHC 723 (Admin) (re potential public nuisance caused by extending operating hours of a pub, arising from noise and disturbances to local residents).  
[^j]: (1992) 13 Cr App R (S) 204.  
[^k]: (1832) 3 B & Ad 184 (KB) 188, 110 ER 1209.  
[^l]: [1993] QB 343 (Buckley J). 

In other cases of widespread private nuisances, however, the courts have treated the cases as arising from a series of individual claimants who have suffered from some interference with the enjoyment of their private property, rather than constituting any impairment of rights common to the public at large. This issue arose peripherally in *Hunter v Canary Wharf Ltd.*[^55] the leading

[^55]: [1997] AC 655 (HL), and see 722 for Lord Cooke’s comments.
authority on private nuisance in the jurisdiction (and analysed, in that regard, in Chapter 16). Many households were affected by dust, and interference with television reception, during the course of the construction of the Limehouse Tunnel, and as a result of the construction of Canary Wharf Tower at the Isle of Dogs, London. The trial judge considered that interference with essentially private interests was properly brought as a private nuisance action, and struck out the parts of the pleading that contained a plea of public nuisance. That part of the trial judge’s decision was never appealed, and when the case ultimately reached the House of Lords, only Lord Cooke commented on the issue, remarking that, in his view, the action could have been brought in public nuisance. More recently, in *Barr v Biffa Waste Services Ltd (No 3)*, where a group action was brought by 152 householders on the Vicarage Estate in Hertfordshire, seeking damages in nuisance against Biffa for odours from pre-treated waste emanating from Biffa’s landfill site, it was brought as a private nuisance action, and judicially treated as such.

The issue is not without significance, because there are some notable differences between the torts of public and private nuisance (e.g., re the rules of standing, and the types of damage recoverable), as summarised at the conclusion of this chapter. For the sake of doctrinal purity, it is submitted that widespread private nuisances are best considered as exactly that (and as occurred in *Hunter v Canary Wharf*), and should be excluded from the uncertain ambit of public nuisance torts.

**Interferences with public enjoyment**

§PU.12 Some activities are put on to be publicly enjoyed and partaken of, and when they are interfered with, a public nuisance may ensue.

To provide a couple of disparate examples of this category, for illustrative purposes:

In *Stoke-on-Trent CC v W&J Wass Ltd* the council, C, operated public markets within its area on certain days of the week; but D set up a rival and unauthorised market on a different day of the week. The setting up of the rival market amounted to a public nuisance. In *R v Ong*, D planned to extinguish the floodlights at a Premier Division football match between Charlton Athletic and Liverpool, in order to make a fraudulent gain for a group of Far Eastern bookmakers. If the plan had gone through, that would have plunged the ground into darkness, and prevented the thousands of spectators from seeing the match they had paid to see. Extinguishing the lights at a football match could amount to a public nuisance.

**Matters which are not relevant to proving an actionable interference**

§PU.13 An interference with C’s land, or with the enjoyment of his land, is not necessary for public nuisance.

A public nuisance may legitimately involve conduct that entails no actual or potential interference with C’s land, or with C’s right of enjoyment in that land.

This point was reiterated by the Court of Appeal in *Corby Group Litigation* – ‘[t]he definition of the crime of public nuisance says nothing about enjoyment of land, and some public

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56 [2011] EWHC 1003 (TCC) [129], [188].  
57 [1988] 3 All ER 394 (CA) 398 (Norse LJ).  
58 [2001] 1 Cr App R (S) 117 (commencing at p 404).
nuisances undoubtedly have nothing to do with the interference with enjoyment of land ... A public nuisance is simply an unlawful act or omission which endangers the life, safety, health, property or comfort of the public.\textsuperscript{59} The case of \textit{R v Ong}\textsuperscript{60} illustrates, for extinguishing the lights at a football match did not involve C’s use or enjoyment of his own land.

\textbf{§PU.14} It is not necessary, for the tort of public nuisance, that D must have acted negligently.

Proof of negligence on D’s part is not an essential element of the tort of public nuisance, although it often is present. All that public nuisance requires is that D commits some unlawful act such that he endangers the life, health, safety or convenience of the public. Lord Reid commented, in \textit{Wagon Mound (No 2)},\textsuperscript{61} that, '[a]n occupier may incur liability for the emission of noxious fumes or noise, although he has used the utmost care in building and using his premises.' Negligence will, however, assist to prove public nuisance. As Akenhead J pointed out in the \textit{Corby Group Litigation}, '[s]trictly speaking, negligence or breach of a statutory duty is not essential in public nuisance although, if there is negligence or a breach of statutory duty which causes life or health to be endangered, there \textit{will} be a public nuisance.'\textsuperscript{62} The following cases illustrate:\textsuperscript{63}

In \textit{Dymond v Pearce},\textsuperscript{64} facts previously, D’s parking of the lorry was not negligent, given that he parked it under a street light, turned its tail lights on, and parked it on a bend where it was more likely to be clear of other passing vehicles. Nevertheless, an actionable public nuisance occurred (but the action failed, overall, because of lack of a causal link). In \textit{Wringe v Cohen},\textsuperscript{65} the gable of D’s house situated next to a road was blown down in a storm, and hurt passer-by C. D’s house was in a defective state, but he did not know that, and was not negligent in not knowing, but was liable in public nuisance.

\textbf{§PU.15} One-off interferences are as much capable of giving rise to public nuisance as are repeated occurrences.

In \textit{AG v PYA Quarries}, Denning LJ remarked, obiter, that ‘an isolated act may amount to a public nuisance if it is done under such circumstances that the public right to condemn it should be vindicated’,\textsuperscript{66} and, in \textit{British Celanese v AH Hunt (Capacitors) Ltd}, Lawton LJ reiterated (in the context of public nuisance) that ‘an isolated happening by itself can create an actionable nuisance’.\textsuperscript{67}

**ELEMENT #2: KNOWLEDGE OR FORESEEABILITY**

**The general rule**

\textbf{§PU.16} To be liable in public nuisance, D must have known, or should have reasonably foreseen, that an actionable interference, and the type of damage attributable to that interference, could arise as a consequence of his activities.

\textsuperscript{59} [2008] EWCA Civ 463, [27]. \textsuperscript{60} [2001] 1 Cr App R (S) 117 (commencing at p 404).
\textsuperscript{61} \textit{Overseas Tankship (UK) Ltd v Miller Steamship Co Pty} [1967] AC 26 (PC) 45.
\textsuperscript{62} [2009] EWHC 1944 (TCC) [688].
\textsuperscript{63} See too: \textit{R v Lister} (1857) 169 ER 979 (D’s premises housing wood naptha kept carefully; liability proven).
\textsuperscript{64} [1972] QB 496 (CA). \textsuperscript{65} [1940] 1 KB 229 (CA). \textsuperscript{66} [1957] 2 QB 169 (CA) 192. \textsuperscript{67} [1969] 1 WLR 959 (QB) 969.
The mental element of the tort (and crime) of public nuisance has varied somewhat over time, but the modern approach is that D is not liable for a public nuisance which was created without his knowledge, or which he could not reasonably foresee. This position was endorsed by the House of Lords in *R v Rimmington; R v Goldstein*.  

In *Rimmington and Goldstein*, Mr Goldstein, G, put salt into a packet to be sent through the post to his friend, as a joke, but some of it split out at the Wembley postal sorting office, thereby causing some postal workers (and especially Mr Owen, upon whom the salt spilled) to fear that the salt could be anthrax. This led to the evacuation of 110 employees from the sorting office; the cancellation of the second postal delivery for the day (affecting over 35,000 businesses) because the manager of the post office did not want to pay overtime to the sorting officers to ensure that the second post was attended to; and the summoning of the police to deal with the possibility of a terrorist action. **Held:** no public nuisance was proven. G did not know or ought to have known that the salt would leak out; he would not have wished for that result, as it would have made the joke entirely futile (which it did). Even if he should have reasonably foreseen that, at the time of tensions following 9/11, escape of the salt would have caused mayhem, he neither knew, nor had the means of knowing, that the Wembley sorting office would be evacuated, and the second delivery of post cancelled. That cancellation was a commercial decision by the manager, and G could not have anticipated that decision, when he posted the letter.

It follows that D may not know of the precise actionable interference which, in fact, occurred; but it is sufficient, to fix D with liability, if he should have anticipated the interference, and the consequent mischief or damage, given the facts and circumstances of which he was aware. Recently, the Court of Appeal described the mental element required of D thus: ‘he ought to have known (because the means of knowledge were available to him) of the consequences of his actions’ (per *R v Chapman*).  

In *R v Shorrock*, Peter Shorrock, D, licensed a field on his farm to three people for a weekend, and then went away for the weekend. He did not know that the field was to be used for an ‘acid house’ party that lasted 15 hours. The party created a lot of noise, giving rise to complaints from 275 people living up to four miles away. D and the organisers of the party were convicted of public nuisance. D appealed, arguing that the prosecution had not proved that he had knowledge of the events that had occurred. **Held:** a public nuisance occurred, for which D was liable. It wasn’t necessary to prove that D actually knew of the party or of its likely consequences; but he should have foreseen that there was a real risk that the licence granted by him over the field could create the sort of nuisance that occurred.

In *Anthony v Coal Authority*, A and other homeowners in villages near to a spoil tip owned by D, complained in private and public nuisance, re a fire which broke out on part of the site in 1996, and which continued to seat until 2000. The fire caused clouds of smoke and noxious fumes to adversely affect the use and enjoyment of Cs’ properties. The fire and resulting effects had been caused by spontaneous combustion, rather than the act of a trespasser. **Held:** an action in private nuisance proven; but the court also held that (but for a possible defence), public nuisance was also made out. The spoil heaps had not comprised a foreseeable nuisance at the time of their creation; but later on, D had become aware of the risks posed by the spoil tip. During the period 1971–83,
after tipping had ceased, this tip was known to be a risk for spontaneous combustion; and D’s predecessor knew during the 1980s that the flank of the spoil tip was subject to erosion, exposing coal waste to oxidation, and regenerating the known risk of heating and, therefore, spontaneous combustion.

It may be held that D should even have foreseen the presence of trespassers who caused the inconvenience to C – the law has been willing to construe the test of foreseeability, in public nuisance, quite liberally.

In Clift v Welsh Office,[72] roadworks were carried out by Welsh Office, D, which meant that many people undertook ‘rat-running’ around the roadworks, using a service lane. That lane backed onto 12 houses. One particular homeowner, the Clifts, C, had a garage immediately fronting onto the service lane, and were the only residents to have vehicular access directly onto the service lane. The rat-running caused them significant inconvenience; they could have built a gate to prevent the rat-running, but that would have involved a cost and inconvenience in having to open and close the gate when they, or others having the right to do so, wished to pass along the service lane. Held: public nuisance was proven. D, by their roadworks, created a situation in which they must have known both that the rat-running on the service lane was a probable consequence, and that was in fact occurring, albeit arising through the acts of trespassers. Nevertheless, that was sufficient to prove liability.

This position also reflects that which applies in private nuisance. As discussed in Chapter 16,[73] the damage caused by the actionable interference must have been known, or reasonably foreseeable, by D in private nuisance (per Cambridge Water Co v Eastern Counties Leather plc).[74] In that respect, D cannot be strictly liable under either tort: knowledge or reasonable foreseeability is a pre-requisite.

### The exception

§PU.17 The only exception is that an employer may be vicariously liable for a public nuisance committed by an employee, about which the employer knows nothing and could not have foreseen.

In such a case, D, as employer, is strictly liable. The reasoning underpinning that is derived from the judgment of Mellor J in R v Stephens,[75] and is three-fold:

i. the crime of public nuisance is ‘in the nature of a civil proceeding’ (in which persons can certainly be vicariously liable without knowledge of the acts of their employees);

ii. where the only reason for suing for the crime (as opposed to the tort) of public nuisance is that the nuisance affects the public at large but that no individual has suffered ‘special damage’, then it is proper to regard an employer whose employees created that public nuisance as vicariously (and strictly) liable; and

iii. furthermore, it was said, by Mellor J, that even though the employer may not know of the act of public nuisance or instruct it to be carried out, it is the employer who ‘finds the capital, and carries on the business which causes the nuisance, and it is carried on for his benefit’.

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[74] [1994] 2 AC 264 (HL) 300–1. 

In *R v Stephens*, S, the owner of a slate quarry, did not order his workmen to carry out certain works, but they did, and caused a public nuisance in the process. **Held**: S was vicariously liable for the public nuisance so created.

Even though the House of Lords in *R v Rimmington; R v Goldstein* seemed uncomfortable with this exception to the knowledge-or-foreseeability requirement for public nuisance, Lord Bingham did not disapprove of *Stephens* – merely noting that *Stephens* used the overlap between the criminal offence and the civil tort to justify the approach that D can be liable, even where there is no knowledge or foreseeability of the public nuisance for which he is liable.

**C's fear of danger**

C must be aware of the fact of the danger or interference – the apprehensions on C’s part must be 'well-founded' (i.e., the danger or interference is probable), and not merely honestly-held.

In most cases, the interference or annoyance has already occurred, and C is complaining about it. But in some cases, the essential nub of C’s complaint is that he fears that a danger or interference will cause C damage that sounds in public nuisance. A public nuisance may indeed arise from what might happen in the future from D’s activities but which is yet to materialise. In this type of case, C will seek a *quia timet* injunction.

Where the apprehensions are of a non-existent danger or interference, no complaint of nuisance can be sustained (per *R v Lister* and approved in *Birmingham Development Co Ltd v Tyler*). It is insufficient if C has an honest fear of danger – the fear must be well-founded, ‘which means proving on the probabilities the reality of the danger that has given rise to the fear’ (per *Tyler*).

In *AG v Corp of Nottingham*, the AG brought a public nuisance claim, on behalf of local residents living near a smallpox hospital in Nottingham, alleging that the presence of the hospital presented a serious danger to them. No actual injury (i.e., spread of smallpox) had been suffered at the time that the action was brought. **Held**: no public nuisance proven. The scientific evidence did not support the theory of the aerial spread of the disease of smallpox; and the establishment of a properly-conducted smallpox hospital was not such a source of well-founded danger that it could give rise to a public nuisance for which an injunction would lie in a *quia timet* action.

**ELEMENT #3: AN INTERERENCE AFFECTING THE PUBLIC (OR A SECTION OF IT)**

**A common injury to a section of the public**

Where D inflicts ‘a common injury on the public’ – which requires the simultaneous interference with the property, life, health or safety of a significant section of the public – then the essential public nature of the tort is proven.

According to *R v Rimmington; R v Goldstein*, a key issue for public nuisance is that the interference must be, not only public, but *common*. Lord Rodger remarked that, ‘it has remained

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76 (1857) 169 ER 979, 987–88.  
78 [1904] 1 Ch 673.  
an essential characteristic of a public nuisance that it affects the community, members of the public as a whole, rather than merely individuals, while Baroness Hale noted that, ‘[i]t is not permissible to multiply separate instances of harm suffered by individual members of the public, however similar the harm or the conduct which produced it, and call them a common injury’. Hence, as reiterated in DPP v Fearon, Rimmington emphasises the importance of establishing the public nature of nuisance. It needs to be a coincident interference too – ‘the simultaneous interference with the rights of a significant section of the public’ (per Colour Quest Ltd v Total Downstream UK plc).

What does not satisfy the element is the infliction of a similar injury across a wide cross-section of individuals. The summation of many individual acts does not equal a ‘common injury’. In Rimmington, Lord Rodger explained the problem in this way: ‘no such individual act [e.g., a threatening phone call] can become a public nuisance merely by reason of the fact that it is one of a series [of threatening phone calls]. Otherwise, acts which were not criminal [or tortious] when originally done would become criminal [or tortious] at some unspecified point when the defendant had made enough for it to be said that, taken together, they were affecting the public in the neighbourhood.’

Undoubtedly, the aforementioned sentiments apply a ‘brake’ upon the operation of the tort. However, it is equally apparent that the element has become somewhat difficult to apply. Several authorities demonstrate the sometimes uncertain line between an interference or danger which has the necessary ‘public nature’, and one which does not.

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**The requisite ‘public nature’ of the tort**

**Not proven where D …**

- sent 538 packets of racist, insulting, threatening and obscene literature to various recipients (including prominent public figures) by post, over the course of nine years. This was a racist campaign against numerous individuals, and not against the public (R v Rimmington – the conviction of R, for a count of public nuisance, was overturned);
- solicited a prostitute within a known vice area of Nottingham. This could not amount in law to an offence of public nuisance, according to DPP v Fearon – and ‘in view of the rejection of a series of individual acts as common injury, it would not even be a common or public nuisance to approach lots of women’ in a ‘red-light’ area;
- made numerous nuisance obscene phone calls to a number of people (as Mr Rimmington also did in R v Rimmington – his conviction was overturned, because there was no common injury being suffered by members of the public – despite a line of authority which had stated that numerous phone calls could be a public nuisance, including R v Norbury, R v Millward, R v Eskdale, and...
Element #3: An interference affecting the public (or a section of it)

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R v Johnson (Anthony), all of which were overruled by Rimmington as wrongly decided. Hence, the guilty plea to public nuisance in R v Kavanagh, in which K made hundreds of explicitly sexual telephone calls to a number of different women over a period of 20 months, must be regarded as suspect (although this case was decided after Rimmington, it only concerned a dispute about sentence, and Rimmington was not referred to);

• made a hoax phone call to a steelworks, saying that explosives were present at the site, which was received by a telephonist, who informed the engineer and also the police; and the chief security officer of the works had eight security men carry out a search for over an hour. This was merely an injury to individual persons (the recipients of the hoax), not to the public at large (R v Madden).

... but proven where D ...

• posted an envelope containing salt to a friend, meant as a ‘joke’ (as Mr Goldstein did in R v Goldstein) – the House of Lords held that the cancellation of the post, and disruption to thousands of businesses, could be an injury to a significant section of the public so as to amount to a public nuisance (but it will be recalled that G’s conviction for public nuisance was overturned, as he did not have the requisite knowledge or foreseeability);

• made a number of hoax bomb threats, one of which meant that a public bus had to be stopped in Birmingham, and all of its passengers detained and searched, and all of which caused significant inconvenience and public disruption (R v Miah).

The numbers affected by the common injury

It is sufficient if an interference or danger is suffered by a sub-section of the public, rather than by the public as a whole. Where a public right of way is affected by the interference, it is sufficient if only a few who actually use that right of way are adversely affected.

At one end of the spectrum, what is not required is proof that all of the public should be affected by the nuisance – ‘for otherwise no public nuisance could ever be established at all’ (per AG v PYA Quarries). Of course, if a relator action is being used to restrain the commission of a public nuisance by means of an injunction, then it is possible that the numbers of public affected could be very extensive (i.e., ‘the public at large’). However, if members of the public are to bring successfully a claim for public nuisance, then they must prove special damage (the next element #4), and hence, there must be some harm to differentiate those claimants from the rest of the public who did not suffer that particular damage. Ironically, if the whole public is affected equally by a particular interference with a right (say, of passage), then it will be difficult for any of them to bring a claim for damages for public nuisance, as ‘special damage’ particular to any one of them will be difficult to prove.

Mid-spectrum, the entitlement to damages for public nuisance can seemingly arise, even if a fairly large sub-section of the public is affected by the interference. As Akenhead J remarked in Bodo Community v Shell Petroleum Development Co of Nigeria (where damages, rather than

91 [2008] EWCA Crim 855, [2008] 2 Cr App R (S) 86.
92 [2014] EWCA Crim 938. See too the hypothetical example in Rimmington [2005] UKHL 63, [42] (Lord Nicholls).
93 [2015] 2 QB 169 (CA) 182 (Romer LJ).
injunctive relief, were being sought in relation to an oil-spill in the Niger delta: ‘[i]t is almost a contradiction in terms that, where the public overall in say a town or a sizeable community (affected by, say, an unlawful traffic obstruction) suffers equally general inconvenience or injury, they all have a claim in public nuisance. I would not wish ... to put some percentage on the numbers of a community who might have to be considered to have suffered particular injury or inconvenience, such as would establish their entitlement to claim for public nuisance.’95

Alternatively, the demographic which may be affected, for a public nuisance action to arise, has been judicially described: as ‘perhaps affecting a few people living locally, as well as major disturbance affecting the whole community’ (R (on the Application of Developing Retail Ltd) v East Hampshire Magistrates’ Court96); or as ‘a substantial section of the public’ (R v Rimmington97); or as ‘a representative cross-section of the class of Her Majesty’s subjects’ (AG v PYA Quarries98).

At the other end of the spectrum, where a public right of way is affected, then it seems that the availability of an action for public nuisance does not depend solely on how many are, in practice, affected by the interference. The potential numbers of those affected is more relevant. In PYA Quarries99 Denning LJ mentioned that, where a footpath is obstructed, then what matters is that it is a public right of way which the general public is entitled to use, and it does not matter that ‘it may be a footpath very little used except by one or two householders’. Elsewhere, he referred to ‘only 2–3 property owners’ being entitled to bring an action for public nuisance (that was not the case there, as D’s quarrying operations affected a large number of householders). These statements indicate that the sub-section of the public can be very small indeed. In practical terms, too small a group of claimants affected by the nuisance has not been at issue.

In Jan de Nul (UK) Ltd v NV Royale Belge100 facts previously, the fact that only some vessels (and often only of certain size) may actually be affected by a silted-up estuary, and that the nuisance does not actually obstruct navigation in the river or estuary generally, did not affect the ability of an affected shipping company, C, to sue in public nuisance for damages. There was a public right of navigation throughout the tidal waters of the estuary, and access to certain parts of it were significantly affected by the deposit of silt. In Tate & Lyle v GLC101 facts previously, it was the vessels seeking to moor at C’s raw sugar terminal which were affected by the silting-up of the Thames. Once C’s two jetties had been built, and an approach channel had been created by dredging, a public right of navigation extended over them ‘for the whole width and depth of water in the river Thames’, and it was irrelevant that only vessels of certain size were affected in trying to gain access to C’s jetties. In Anthony v The Coal Authority102 the group of residents complaining of public nuisance by fire and noxious fumes comprised seven, and no adverse judicial comment was made about that small number.

95 [2014] EWHC 1973 (TCC) [172]. Ultimately, public nuisance was irrelevant, as a statutory compensation scheme was held to have replaced it, under the Oil Pipelines Act 1956.
98 [1957] 2 QB 169 (CA) 170, 184 (Romer LJ).
100 [QB Comm Ct, 31 Jul 2000, Moore-Bick J] [37]–[41], aff’d: [2001] EWCA Civ 209.
101 [1983] 2 AC 509 (HL) 537 (Lord Templeman).
ELEMENT #4: THE INTERFERENCE CAUSED ‘SPECIAL DAMAGE’

The tort of public nuisance is not actionable per se. C must have suffered ‘special damage’ from D’s interference, over and above that suffered by the public. This requires that C’s damage was ‘particular, direct and substantial’.

Proof of damage is an essential ingredient of the tort (per Stoke-on-Trent CC v W&J Wass Ltd\textsuperscript{103}). The types of damages recoverable for public nuisance are dealt with under ‘Remedies’, below.\textsuperscript{104} This section focuses upon the legal principles by which to establish the requisite damage.

The requirement of ‘special damage’

The need for special damage became particularly acute in the 19th century, when railways were being constructed across the length and breadth of Britain, and huge numbers of homes and businesses (especially hotels and pubs) were injuriously affected. The requirement was imposed to limit the floodgates of claims in public nuisance, for the (mainly) economic losses sustained by this massive development of infrastructure (per Wildtrees Hotels Ltd v Harrow\textsuperscript{105}). As noted recently in 2014 in Bodo Community v Shell Petroleum Development Co of Nigeria,\textsuperscript{106} the requirement has been part of English law for over 150 years.

In some cases, particularly obstruction-of-thoroughfare cases, proof of special damage is so obvious that it almost goes without saying that C’s damage was particular, direct and substantial. The examples (below) suggest that it is the degree, or quantum, of damage which C suffers, which sets C’s damage apart from the rest of the public’s.

In Dymond v Pearce,\textsuperscript{107} this example was cited: ‘if D digs a trench across the highway, and C comes driving that way by night, and the car and driver fall in the trench so that C suffers great damage and inconvenience, C has an action against D who made the trench across the road, because C is more damaged than any other person.’ In Clift v Welsh Office,\textsuperscript{108} facts previously, public nuisance was proven, because the interference with the use of the roads and footpaths in the immediate vicinity of the roadworks, and the rat-running, amounted to special damage suffered by C, whose garage adjoined the service lane, sufficient for public nuisance. The rat-running was a direct consequence of the temporary obstructions brought about by the roadworks.

However, by contrast, this has not been a particularly straightforward element in all cases of public nuisances, especially in obstruction-of-access cases. In Moto Hospitality Ltd v Sec of State for Transport,\textsuperscript{109} the Court of Appeal admitted that ‘[i]t is not easy to find a clear or consistent dividing line in the cases between particular damage, which founds a cause of action, and damage shared with the public in general, which does not.’ In Wildtree Hotels Ltd v Harrow LBC,\textsuperscript{110} Lord Hoffmann conceded that the requirement ‘offers considerable scope for dispute … reflect[ing] different judicial views on what amounts to particular damage.’

The requirement of ‘substantial’ has been judicially interpreted to mean ‘more than merely trivial injury’ (per Jan de Nul (UK) Ltd v NV Royale Belge\textsuperscript{111}), and hence, it places scant

boundaries on the requirement. The ‘direct’ requirement, on the other hand, has been controversial. In Moto Hospitality,\textsuperscript{112} it was clarified that C does not have to show that the interference caused by D occurred on, or directly ‘appurtenant’ (i.e., adjoining) to, C’s land; and while proximity of the interference to C’s land or premises may help to show directness, proximity is not a separate criterion for proving ‘special damage’. D’s activities may actually affect a site some distance away from C’s premises – and yet still amount to direct damage to C.

In Caledonian Rwy Co v Walker’s Trustees,\textsuperscript{113} C’s spinning mill in Glasgow was accessed by two streets, Canal Street and Victoria Street, which both connected to Eglinton Street, a major road 90 yards away. A new railway was constructed along Eglinton Street. After that, direct access to the mill from Canal and Victoria Streets was cut off. Instead, access was via a route across the railway further south, involving a much longer and circuitous journey and with steeper hills to negotiate. Held: C recovered compensation under the Land Clauses Consolidation Act 1845; and a public nuisance was proven too. Prior to the new railway line, the mill had direct, straight, and practically level access, for all sorts of traffic, to Eglinton Street, one of the main thoroughfares of the city. After the works, direct access to Eglinton Street was taken away. It did not matter that the obstruction was not immediately appurtenant to the mill. It was sufficiently direct and proximate.

Conversely, proof of direct impact may be impossible to show, even if the obstructions caused by D’s activities are proximate. Without that requisite directness, there will be no ‘special damage’ suffered by C.

In Moto Hospitality, Moto Hospitality, C, operated a petrol service station close to a motorway junction, which it sub-leased from Esso Petroleum Co Ltd. Alterations were carried out to the junction by the highway authority during 2001–2, which involved stopping-up and realigning various sections of the highway, including the slip roads. C claimed that the new arrangement substantially diminished the value of its site as a service station because, whilst immediate access remained substantially unaffected, the routes to it were longer and less direct. Held: no public nuisance was proven. The obstructions caused by the works were sufficiently proximate, and the relationship between C and the motorway sufficiently special, to prove ‘special damage’— but the inconvenience to C was not direct enough, because it was caused by the rearrangement of the junction as a whole (including the construction of a new roundabout), rather than blocking access roads to C’s station. Overall, there was insufficient ‘special damage’.

In Walker’s Trustees, the claim succeeded, not simply because of the dependence of the spinning mill’s business on the road link, but because of the direct impact of the works on that access, which was ‘altogether cut off’ – whereas, in Moto, the immediate access to Moto’s service station was substantially unaffected. Hence, these cases confirm that directness is essential for proof of ‘special damage’, if C is successfully to bring a claim in public nuisance.

The right to exploit fishing stocks has been one area of contention, as to whether commercial fishermen can prove that they suffered any loss, over and above what members of the public would suffer, to enable them to sue in public nuisance, where riverways or estuaries are silted up. After all, if those fisherman did not enjoy any private right to fish in those waters, then is their loss one that is shared by the general public?

\textsuperscript{112} [2007] EWCA Civ 764, [64]–[72]. \textsuperscript{113} (1881–82) LR 7 App Cas 259 (HL) 285.
In *Jan de Nul v NV Royale Belge*,¹¹⁴ facts previously, **held**: commercial fishermen can suffer special damage where damage to fish stocks or shellfish beds was caused by silt ing up. Being unable to fish or harvest was, in one sense, the same as that which was suffered by the public generally. However, commercial operators were licensed to sell their catches and had established commercial enterprises based on their access to the fishing grounds. This distinguished their losses from those of the general public, enabling them to claim in public nuisance. Moore-Bick J did not follow the Queensland decision of *Ball v Consolidated Rutile Ltd*,¹¹⁵ where Ambrose J had held that an interference with the right of commercial prawn fisherman to fish in the tidal waters of Moreton Bay (caused by a slipped sand dune) did not constitute a public nuisance, and even if it did, there was no special damage suffered by these fishermen.

### The but–for test

SPU.22 C must prove, on the balance of probabilities, that the damage complained of was caused by the acts or omissions of D which constituted the public nuisance.

As stated, public nuisance is not a strict liability tort, in the sense that proof of an interference, together with the requisite knowledge or foreseeability, will do. In *Dymond v Pearce*,¹¹⁶ the Court of Appeal soundly rejected that proposition – in the inimitable words of Edmund Davies LJ, were causation not to be required for public nuisance claims to succeed, then that 'would have led to the creation of a new sort of tort, a legal freak. For my part, I am not prepared to act as its midwife.'

If there was some cause, other than D’s public nuisance, which probably caused C’s damage, then causation will fail, unless one of the exceptional theorems of causation applies. The other causes for C’s damage may be C himself, other parties, or natural causes. These principles are discussed fully in Chapter 8. A couple of examples:

In *Dymond v Pearce*,¹¹⁷ facts previously, **held**: public nuisance failed. C’s motorcycle ran into the back of D’s parked lorry, because C was riding along and ‘watching the attractive young ladies on the pavement, instead of looking ahead of him to see what conditions he was about to encounter’. Hence, the sole cause of the accident was C’s own negligence.

In *Corby Group Litigation v Corby DC*,¹¹⁸ facts previously, the children’s claims concerned birth defects (shortened or missing arms, legs and fingers), allegedly the result of their mothers having ingested or inhaled harmful substances (mainly heavy metals such as cadmium and nickel, as well as toxic dioxins) which had harmed the claimants whilst *in utero*. According to epidemiological evidence, there was a statistically significant cluster of birth defects in Corby between 1986–99. **Held**: throughout that period, the toxic and contaminated substances, which could have caused those types of birth defects, were present on D’s reclamation sites. However, from August 1997 onwards, it could not be proven that the birth defects in children conceived thereafter were caused by any public nuisance, because of a lack of significant emissions of contaminants. It was left to individual C’s to prove, in subsequent proceedings, that their particular physical defects were actually caused by...
by the acts or omissions of D in permitting the dispersal of such dangerous material without taking adequate precautions.

In *East Dorset DC v Eaglebeam Ltd*,\(^{119}\) facts previously, Eaglebeam, D, operated a noisy motocross circuit that generated a large amount of the noise, but said that much of it was attributable to other businesses and individuals. **Held:** public nuisance was proven. The other 'causes' could be discounted, as they had ceased operations.

### DEFENCES

The defences available to D in private nuisance (discussed in Chapter 16) are also available in public nuisance – except where D acquires a right to carry out the actionable interference by prescription: ‘[g]enerally speaking, the court will not recognise a prescriptive right as having been created by criminal activity. This includes a [criminal activity via] public nuisance’ (per *Couper v Albion Properties Ltd*\(^{120}\)).

It is also worth noting that the mere fact that D’s obstruction or interference is of benefit to the public is no defence to an action for public nuisance. In *Couper*, D’s respected art collection undoubtedly provided the public with an important social amenity, but D was still liable in public nuisance.\(^{121}\)

Two points are worthy of special mention, though, in the context of defences to public nuisance.

### Statutory authorisation

§PU.23 If D commits an actionable interference which is authorised by statute, and which would (but for that authorisation) be a public nuisance, the statutory authorisation provides a defence to that nuisance – provided that every reasonable precaution, consistent with the exercise of the statutory powers, has been taken to prevent the nuisance occurring.

According to *Allen v Gulf Oil Refining Ltd*,\(^{122}\) C bears the burden of proving that (1) a nuisance was an inevitable result of carrying out an act which is authorised by or under the statute, and (2) every reasonable precaution had been taken. The defence applies, regardless of whether the action is brought under s 222 of the Local Government Act 1972 by a local authority or by an aggrieved resident himself.

The interplay between the Environmental Protection Act 1990 (EPA) and the defence of statutory authorisation is of particular legal interest, where D is granted an authorisation by the relevant local authority under Pt I of the EPA, to carry out the nuisance-creating activity at his premises.

In *Mid Suffolk v Clarke*,\(^{123}\) D, who ran a smelly pig farm, was granted an authorisation to process animal remains and by-products at his premises of Rookery Farm. The authorisation was subject to

\(^{119}\) [2006] EWHC 2378 (QB) [32].

\(^{120}\) [2013] EWHC 2993 (Ch) [592] (Arnold J, citing: *Bakewell Management Ltd v Brandwood* [2004] UKHL 14, [41]–[42] (Lord Scott).

\(^{121}\) ibid, [542].

\(^{122}\) [1981] AC 1001 (HL) 1011, 1013, 1015, 1018.

a variety of conditions, including: ‘[n]o offensive odour from the process shall be detectable beyond the site boundary. The operator shall not be in breach of this condition if it can be shown that all reasonable steps were taken and due diligence was exercised to prevent the release of offensive odour.’ An action for public nuisance was brought by the relevant local authority on behalf of disgruntled nearby residents. Held: the question was left open as to whether it would be a defence for D to show that his activities were defensible because of the authorisation granted under the EPA.

The Court of Appeal noted, however, that ‘[i]n principle, the statutory regime under the 1990 Act and the law relating to public nuisance are quite distinct’, albeit that the case was not an appropriate vehicle to determine that issue, given its history and the dispute being litigated in the case.  

**What if C ‘comes to the nuisance’?**

§PU.24 Where C has come to live in a noisy or smelly area, he can still thereafter successfully complain that an activity which was present there before his arrival is a public nuisance.

Where the public nuisance activity was already there, and C came to live or work in the vicinity, it is not possible to argue that C was solely responsible for his own discomfort, annoyance, etc – simply because he came to live or work in an area in which a nuisance-creating activity was already situated.

In *East Dorset DC v Eaglebeam Ltd*, facts previously, the operators of the motocross circuit, D, criticised the surrounding residents for complaining about the noise, and argued that, ‘after all, they did buy their houses knowing that they had a noisy neighbour, and the fact that they are now grumbling that it affects their value ... does not meant that they have not gone up in value. And they have only got themselves to blame for coming there in the first place.’ Held: public nuisance was proven. The fact that the residents had come to the nuisance, knowing that it was a noisy environment, did not bar a finding of a nuisance, or the award of an injunction.

**REMEDIES**

**Damages**

§PU.25 Damages in public nuisance can be recovered for: diminution in value of C’s property or proprietary right in the land; and for any consequential personal injuries or economic losses (including loss of trade or custom) caused by D’s interference.

**Diminution in value**

Where C has suffered loss to his property, or some proprietary right, from the public nuisance, C may recover damages equivalent to the diminution in value of that property/right (*Stoke-on-Trent CC v W&J Wass Ltd*).

**Personal injuries**

It will be recalled from Chapter 16 that damages for personal injuries are not recoverable for private nuisance. However, the obverse position applies in public nuisance.

*ibid*, [31], [41].  
*2006* EWHC 2378 (QB) [19], [32].  
*1998* 1 WLR 1406 (CA).
In *Corby Group Litigation v Corby BC*, Corby BC had applied to strike out the group claimants’ actions for damages for personal injuries (i.e., numerous birth defects) for public nuisance, on the basis that such damages were not available for that tort. There was some support for this in Lord Goff’s judgment in *Hunter v Canary Wharf Ltd*, who referred to the ‘now developing school of thought that the appropriate remedy for such claims as these should lie in our now fully developed law of negligence, and that personal injury claims should be altogether excluded from the domain of nuisance’. However, the *Corby* Court of Appeal held that damages for personal injuries could be awarded in public nuisance, for three reasons:

i. the availability of personal injuries in public nuisance had not been expressly or impliedly overruled by the House of Lords’ decisions on private nuisance in either *Hunter v Canary Wharf Ltd* or *Transco plc v Stockport MBC*. Furthermore, whatever Lord Goff said in *Hunter* was not definitive; and any future reconsideration of the issue by the Supreme Court/House of Lords ‘is not a reason for this court not to apply the law as it now stands’;

ii. it was logical that damages for personal injuries would not be treated consistently under both torts of private and public nuisance. For private nuisance, where such damages are barred, that is a tort relating to C’s use and enjoyment of rights in land; whereas the essential nature of public nuisance was the right not to be adversely affected by an unlawful act or omission whose effect was to endanger the life, safety, health, etc of the public (and Dyson LJ cited the US view in *Restatement of the Law, Torts*, in support of that distinction);

iii. where the life, safety or health of the public is endangered by D’s acts or omissions, then it is logical to allow the public to recover for personal injuries suffered, because ‘[o]ne obvious consequence of such an act or omission is personal injury’.

In later *Corby Group Litigation*, the Corby BC ‘reserved its position to argue, ultimately, in the House of Lords to the contrary’ – but, to date, a review has not occurred. Recently, in *Bodo Community v Shell Petroleum*, the court reaffirmed the *Corby* view that damages for personal injuries are available in public nuisance.

Undoubtedly, this renders the tort a rather more useful means of recovering compensation than private nuisance, where the health of the public (or a sub-section of it) is compromised by D’s activities.

**Economic damages (and the ‘user principle’)**

Damages for economic loss are recoverable in public nuisance, but subject to the usual caveat – proof of special damage (accepted as correctly conceded in *Colour Quest Ltd v Total Downstream UK plc*).

Moreover, *Colour Quest* confirmed that it is not only extra expenses incurred by C himself which can be recovered, if access to his property is blocked or obstructed – as noted previously in the chapter, C is entitled to recover damages in public nuisance for economic losses sustained where access to his premises caused loss of trade or custom because his customers’ access to C’s premises was also obstructed. There had been a great deal of earlier uncertainty as

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127 [2008] EWCA Civ 463, [2009] QB 335, with the reasoning in [22], [29]–[32].  
131 (2nd edn, 1979) 882B(h).  
132 [2009] EWHC 1944 (TCC) [685].  
133 [2014] EWHC 1973 (TCC) [175].  
135 *ibid*, [437], [459] (David Steel J).  
136 Cross cite pp 393–96.
to whether economic losses arising from loss of custom could be recovered\(^{137}\) — but the position in public nuisance has become clarified, in favour of an entitlement to recovery wherever C can prove special damage arising from economic losses.

However, C cannot claim damages on the basis of what would have been an appropriate fee to require D to pay for operation of the nuisance-making activity (i.e., the fees foregone, which could have been charged to D as a licence fee). C’s foregone fee is treated as damages under the ‘user principle’ (i.e., the use which C could have made of the land, equipment or right that D has used or interfered with). However, according to *Stoke-on-Trent CC v W&J Wass Ltd*,\(^{138}\) where D’s public nuisance does not deprive C of all opportunity of exploiting the right to earn fees himself, then C should not be entitled to recover the fees which C could otherwise have made from that right. Otherwise, applying the user principle for C’s benefit ‘would not only give a right to substantial damages where no loss had been suffered, but would revolutionise the tort of nuisance by making it unnecessary to prove loss.’\(^{139}\) The English Court of Appeal was certainly not prepared to take that step in *Wass*.

In *Stoke-on-Trent CC v W&J Wass Ltd*,\(^{140}\) the Council, C, operated a Thursday market at Fenton. At the same time, W&J Wass Ltd, D, operated a Thursday market at Adderley Green, Longton, which was in breach of C’s right to hold a market without a same-day market being held within 6 and 2/3rd miles of C’s market (a right conveyed by statute\(^{141}\) ). C also ran other-day markets in its council area. A public nuisance was proven. However, C could not prove that Wass’s market had caused lost profits to their Wednesday, Thursday, Friday and Saturday markets. **Held (at trial):** C was entitled to an award of damages, equivalent to an appropriate licence fee for D to operate its market. **Held (on appeal):** C was entitled to nominal damages only. C had been able to hold its own markets, and had suffered no loss from Wass’s markets: ‘the user principle ought not to be applied to the infringement of a right to hold a market where no loss has been suffered by the market owner.’

This was not a case of D’s unlawfully interfering with C’s right in a way that prevented C from doing the activity at all. C could hold its own market, contemporaneously with D’s.

**General damages**

Although the heads of damage described above may appear to be capable of precise monetary determination (and they usually are), that is not a pre-requisite to their recovery in public nuisance. In *Jan de Nul v NV Royale Belge*,\(^{142}\) Moore-Bick J confirmed that, provided that C can prove special damage, then general damages can be awarded, wherever C has suffered an injury (property, economic or personal) which cannot be *precisely* measured in monetary terms.

**Inconvenience**

It is ironic that, given the frequently-used expression of ‘inconvenience’ to describe a public nuisance, there is very little judicial guidance as to how to measure it. Recently, in *Bodo Community v Shell Petroleum*,\(^{143}\) Akenhead J commented (in obiter dicta, as the case was not ultimately determined under public nuisance, but as a case of statutory compensation) that

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\(^{137}\) e.g., *Beckett v Midland Rwy Co* (1867) LR 3 CP 82; *Ricket v Directors of the Metropolitan Rwy* [1867] LR 2 (HL) 175; *Metropolitan Board of Works v McCarthy* (1874) LR 7 HL 243; *Lyons v Gulliver* [1914] 1 Ch 631.

\(^{138}\) [1998] 1 WLR 1406 (CA) 1410.  


\(^{140}\) [1998] 1 WLR 1406 (CA) 1410.

\(^{141}\) Under s 49 of the Food and Drugs Act 1955 (replaced by s 50 of the Foods Act 1984).

\(^{142}\) (QB Comm Ct, 31 Jul 2000) [48], aff’d: [2001] EWCA Civ 209.  

\(^{143}\) [2014] EWHC 1973 (TCC) [175]–[176].
damages for inconvenience ‘could be easily quantifiable in road obstruction cases, say, by the cost of extra long car journeys to get round the obstruction, or the time wasted’, but that ‘there is no stand-alone entitlement to damages for inconvenience unless it is quantifiable; thus, damages for distress, shock or fear, falling short of personal injury, are not recoverable.’

**Injunction**

§PU.26 The award of injunctive relief is available to stop the actionable interference which amounts to a public nuisance, at the court’s discretion.

Given its equitable origins, the award of an injunction is a matter for the court’s discretion (per *Miller v Jackson*[^144^]). Notably, an injunction to restrain a public nuisance will not necessarily be granted to stop D’s activities *in toto* – rather, the remedy may be tailored to stop just the *nuisance-making* part of the activity. For example, in *Gillingham v Medway*,[^145^] the local authority only sought to restrain the passage of heavy goods vehicles to and from the port between 7pm and 7am (which claim ultimately failed altogether), whilst in noise cases, the injunction may be directed towards permitting D to emit up to a certain decibel level but no higher, and/or up to x days or weekends per year, or only to take effect when a residential development was ready for occupation (the terms of the original injunctive order in *Coventry v Lawrence*, ultimately restored on appeal[^146^]).

A number of matters will be considered – and often fairly finely-balanced – when deciding whether an injunction should be awarded, as the following case demonstrates:

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**Matters tending to preclude an injunction ...** | **... or favouring an injunction:**
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*East Dorset DC v Eaglebeam Ltd*:[^a^] D’s motocross racing was a public nuisance, and an injunction was granted:
- anyone who runs a sport involving the internal combustion engine is bound to make noise
- Ds had cooperated with local authorities to do a public service, i.e., to try to assist younger people who came to get rid of their excess spirits by being involved in the noisy and slightly dangerous sport of motocross
- Ds sought to take some measures to reduce the noise generated from the circuit and to improve matters (e.g., by repositioning the practice track)
- Ds were not making much money out of the enterprise
- the motocross circuit had been conducted at the site for a long time
- on the evidence, Ds knew that motocross was an over-noisy form of recreation which had been subject to numerous complaints from surrounding residents
- Ds had deliberately continued the activity regardless


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In addition, where injunctive relief is being sought, then a court will need to consider, as and where appropriate, whether any ECHR rights are engaged, and if so, whether it was necessary and proportionate for an injunctive order to be granted.

[^144^] [1977] QB 966 (CA) 980, 982 (Denning LJ).
[^145^] [1993] QB 343.
In Olympic Delivery Authority v Persons Unknown,\textsuperscript{147} facts previously, the Convention rights of the protestors under Arts 10 and 11 of the ECHR (viz, the right to freedom of expression, and the right to freedom of assembly, respectively) were engaged, and had to be balanced against C’s right to exclusive possession of the land which it was redeveloping. \textbf{Held}: the balance came down in favour of granting an interim injunction (until the matter could be fully argued), and again, an injunction until trial. Importantly, the terms of the injunction did not prevent or inhibit lawful and peaceful protest, provided that it did not constitute public or private nuisance.

An injunction to suppress a public nuisance must be subject to any legislation specifically designed to deal with the very situation for which an injunction was sought, because there may be safeguards and pre-conditions provided for in the legislation (e.g., governing the award of anti-social behaviour orders (ASBOs)) which Parliament had specifically detailed. In those circumstances, it would be wrong for a court to exercise its discretion to grant an injunction (unless it was an exceptional case) – rather, C should be left to seek its remedy under the legislation (per Birmingham CC v Shafi\textsuperscript{148}).

In Birmingham CC v Shafi, the Council used s 222 to seek an injunction to restrain alleged gang members Mr Shafi and others, from entering the Birmingham city centre, and from wearing the gang’s colour of green clothing. The Council had already obtained ASBOs under s 1 of the Crime and Disorder Act 1998, but argued that the gang members would continue with their crime-spree and public nuisance activities in the future, unless prevented by injunction. \textbf{Held}: no injunction granted. The court should leave the Council to seek an ASBO so that the detailed checks and balances developed by Parliament and by judges could be applied. It was not an exceptional case in which a ‘parallel creativity’, in the form of an injunction for public nuisance, should occur.

Apart from permanent injunctions awarded at trial (or, at the least, injunctive relief which is time-limited post-trial), C may also seek two alternative types of injunctive relief to restrain a public nuisance:

\textbf{An interim injunction.}\textsuperscript{149} This will be awarded, pending a full trial of the dispute, according to the American Cyanamid principles,\textsuperscript{150} if (1) C has a reasonably arguable case, and (2) the balance of convenience favours the award of an injunction. An award of such an injunction will be made, without the court’s endorsing as lawful or unlawful the alleged public nuisance activities being carried out by D (per Hiscox Syndicates Ltd v The Pinnacle Ltd\textsuperscript{151}).

\textbf{A quia timet injunction.} In the case of a threatened or apprehended public nuisance which could bring about substantial (usually property) damage, a \textit{quia timet}\textsuperscript{152} injunction may be obtained, but only if C can show ‘a strong case of probability that the apprehended mischief will in fact arise’ (per AG v Manchester Corp\textsuperscript{153}). In such a case, ‘the law requires proof by C of a well-founded apprehension of injury – proof of actual and real danger – a strong probability almost amounting to moral certainty’ that an actionable nuisance will result from D’s activities (per AG v Rathmines and Pembroke Joint Hospital Board\textsuperscript{154}).

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\textsuperscript{147} Injunctive hearings at: [2012] EWHC 1012 (Ch) and [2012] EWHC 1114 (Ch) (Arnold J).

\textsuperscript{148} [2008] EWCA Civ 1186, [2009] 1 WLR 1961 (CA) [37], with quote in case description at [43].

\textsuperscript{149} Formerly called an interlocutory injunction – the terminology changed under the Civil Procedure Rules 1998, Pt 25.

\textsuperscript{150} Pursuant to: American Cyanamid Co v Ethicon Ltd [1975] AC 396 (HL).

\textsuperscript{151} [2008] EWHC 145 (Ch) [26], [38].


\textsuperscript{153} [1893] 2 Ch 87, 92 (Chitty J).

\textsuperscript{154} [1904] 1 Ch 673, 677.
An undertaking

§PU.27 A public nuisance may also be remedied by an undertaking given by D, to cease or to curtail the actionable interference. An undertaking is a formal promise to the court to do, or restrain from doing, an act.

In *Kensington Housing Trust v Oliver,* the Court of Appeal described how the remedy of an undertaking is both similar to, and different from, an injunction – both are obligations to the court, but arise in different circumstances: ‘[an undertaking] is equivalent to an injunction, and its breach may be punished by committal proceedings for contempt of court. An undertaking differs from an injunction in that it is given voluntarily to, rather than imposed by, the court. The court may release a party from an undertaking if sufficient reason is shown and it considers that this is the appropriate course to take in the interests of justice’. According to Butler-Sloss LJ, an undertaking ‘is a solemn promise made to the court, and not to the other party to the proceedings. … [and, in the event of breach], the issue is between the court and the contemnor’, and that an undertaking may be more convenient than an injunction, because ‘a party can promise to do or abstain from that which a court would be unable to order. In that way, an undertaking may cover a situation not capable of being the subject of a court order.’

The Court of Appeal took the opportunity, in *Mid Suffolk DC v Clarke* (the pig farm case), to clarify relevant principles which apply, where an undertaking is given by D in a public nuisance case as an alternative to final injunctive relief:

- a court has the jurisdiction to discharge or modify the undertaking, by way of a discretionary power vested in it, only where that discretion was exercised in accordance with the guidance given in *Kensington*;
- there was a strong presumption against disturbing the terms of an undertaking other than on appeal;
- an undertaking should only be discharged or modified if there has been a material or significant change of circumstances – which meant, according to *Kensington Housing Trust*, that changes must have occurred which made it no longer proper to punish D, the undertaker, for breach of his undertaking. D’s conduct must reach a ‘stringent standard’, before an undertaking can be discharged or modified (per *Mid Suffolk*).

In *Mid Suffolk DC v Clarke*, an undertaking was given by D, as an alternative to the final injunctive relief to which the local authority would have been entitled, in view of the continuing and seriously-aggravating smells emanating from D’s pig farm. The undertaking was given for a limited time (7 years), and thereafter to be discharged. D could not obtain a discharge of the undertaking in the meantime, but remained under its terms, as there had been no material change of circumstances to warrant its discharge.

Account of profits

§PU.28 Whether an account of profits or other restitutionary remedy is available for the tort of public nuisance is controversial under current English law, although the current view is that the remedy is not available.

155 [1998] 30 HLR 608 (CA) 613. 156 *ibid*, 611.
Suppose that D is conducting a public-nuisance-making activity, thereby interfering with the exercise or enjoyment of a right belonging to C, and D makes a profit from that interference which exceeds any loss caused to C from the activity. Can C obtain a disgorgement of that profit from D to himself?

The point arose in *Stoke-on-Trent CC v W&J Wass Ltd*, 158 in which the Council proved a public nuisance when D, a rival market operator, interfered with the Council’s right to hold a statutory market. The Court of Appeal held that C could not recover any of the profits which D made on market days.

A decade later, in *Devenish Nutrition Ltd v Sanofi-Aventis (SA) France*, 159 a differently-constituted Court of Appeal referred to the well-known case of *AG v Blake*, 160 in which the House of Lords held that the Attorney General was entitled to be paid the remuneration which the defendant spy was due to make from the publication of an account of his spying activities (arising from the defendant’s breach of contract with the Government); and pointed out that *Wass* (which restricted the availability of restitutionary remedy in 1998) had been decided before *Blake*’s beneficent view of the remedy in 2001. So where does *Blake* leave *Wass*?

All members of the Court of Appeal in *Devenish* 161 agreed that *Wass* was still good law, ruling out an account of profits for public nuisance – but noted that the outcome in such a case may change in the future, if the Supreme Court reviews the point. Longmore LJ refused to consider *Wass* as authority for any proposition that the causes of action in which an account of profits are permissible are necessarily confined to tortious claims for breach of a proprietary right. Hence, that observation does open up the prospect of an account of profits for public nuisances which involve an interference with C’s health, safety or convenience. The other members were somewhat cautious. Lewison LJ noted that *Wass* ‘show[s] that a restitutionary award is not yet generally available in all cases of tort’, and that, while *Wass* had never been overruled or disapproved, it supported the notion that ‘only tortious acts which infringe C’s proprietary or possessory title can ground a restitutionary claim.’ Tuckey LJ agreed that he was bound by *Wass* to hold that an account of profits cannot be awarded for a non-proprietary tort, and that while *Blake* suggests that an account of profits could be ordered for non-proprietary torts (given its award for breach of contract there), *Wass* was not overruled by *Blake*, and could stand consistently with it, whereby non-proprietary torts can be considered differently from breach of contract in English law – ‘unless and until the *Wass* case is overruled’.

Hence, as the law currently stands, per *Wass*, an account of profits is not available for any public nuisance, at least for one which does not involve an infringement of C’s proprietary or possessory title.

**Statutory compensation**

*Where C has suffered a public nuisance during the course of the execution of public works which are covered by Compulsory Purchase Act 1965, statutory compensation may be payable to C.*

This compensation, payable under s 10(1) of the 1965 Act by the Secretary of State, applies in respect of ‘any land, or any interest in land, which has been taken for or injuriously affected..."
by the execution of the works’. Crucial definitions, such as what amounts to ‘works’, are contained in s 1 of the Act. The principles governing the award of statutory compensation under s 10 are colloquially termed ‘the McCarthy rules’ (after the 1874 decision in *Metropolitan Board of Works v McCarthy,* \(^{162}\) which interpreted the predecessor provision in the Land Clauses Consolidation Act 1845).

The principles governing statutory compensation under s 10 were reviewed by the House of Lords in *Wildtree Hotels Ltd v Harrow LBC,* \(^{163}\) wherein Lord Hoffmann summarised them, in part, as follows:

- it is not necessary that C’s land should have been taken or compulsorily purchased, only that it was ‘injuriously affected’ by the works;
- to be ‘injuriously affected’, there must be proof of some damage which would have been wrongful (i.e., that C would have had an action for damages for public or private nuisance), but for the protection afforded by statutory powers;
- compensation is payable only for damage to C’s land or interest in land (and not for any loss caused to him in a personal capacity); and is only for damages caused by the ‘execution’, i.e., the effects of construction, of the works (and not for their operation and use).

These restrict the scope of compensation.

**MISCELLANEOUS ISSUES**

**Statutory nuisance**

In addition to the common law of public nuisance, the statutory nuisance regime in Part 3 of the Environmental Protection Act 1990 may provide a remedy for C.

Section 79 of the 1990 Act defines a statutory nuisance in a variety of ways:

... the following matters constitute 'statutory nuisances' ... —

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;
- (h) any other matter declared by any enactment to be a statutory nuisance; ...
The definition of ‘premises’ includes a vessel; but emanations of smoke from, say, a steam locomotive engine or a private dwelling are excluded from the definition of a statutory nuisance. Under s 79, a local authority must inspect its area to detect any statutory nuisances, and take reasonably practicable steps to investigate complaints. Abatement notices may be served by a local authority under s 80, where a statutory nuisance occurs, and prosecutions may be brought by a Council in respect of contraventions of those notices. Under s 80(7), it is a defence to a statutory nuisance to prove that the best practicable means were used to prevent or to counteract the effects of the nuisance.

In *East Dorset DC v Eaglebeam Ltd*,\(^\text{164}\) it was said that ‘a statutory nuisance is the same as a public nuisance, without reference to the word “public.”’ The public nuisance in that case (the noise generated by a motocross circuit) was also held to be a statutory nuisance under the EPA 1990.

### Interplay with private nuisance

**§PU.31** The torts of public nuisance and private nuisance are not mutually exclusive – the same fact scenario may give rise to both causes of action.

As Dyson LJ stated in *Corby Group Litigation v Corby BC*,\(^\text{165}\) ‘the same conduct can amount to a private nuisance and a public nuisance. But the two torts are distinct, and the rights protected by them are different’. Similarly, in *Jan de Nul (UK) Ltd v NV Royale Belge*,\(^\text{166}\) Moore-Bick J reiterated that public nuisance ‘does sometimes arise for consideration in the context of an interference with [C’s] use and enjoyment of land similar to that which would support a claim in private nuisance’.

The evidence may suggest that the extent of the interference is not widespread enough to constitute a public nuisance, but may give rise to *private* nuisance at the suit of a particular homeowner (as discussed in Chapter 16). It will depend upon the facts.

In *AG v Gastonia Coaches Ltd*,\(^\text{167}\) facts previously, D’s buses had to warm up their engines for the morning and afternoon school runs, the drivers regularly parked their own cars on the road, and the buses were frequently parked on the road overnight or during the day, virtually reducing the road to one lane. Sometimes the parked vehicles (of whatever description) obstructed access to nearby houses. Nearby residents also complained of the excessive noise of ‘revving up’ the engines on starting, testing or repairing, and of the obnoxious diesel fumes emitted by the vehicles. **Held:** a public nuisance was proven, in relation to obstruction of the highway from the parked vehicles. However, there was not sufficient excessive noise or fumes to the residents which would justify a public nuisance, although some residents recovered in private nuisance for the fumes and the revving-up noises. The obstructions caused by parking across premises’ driveways could have constituted a public nuisance, but the evidence (complaints, photographs, witness statements) did not go far enough to support that claim in public nuisance, although again, the owners of one cottage could claim that inconvenience as a private nuisance.

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\(^{164}\) [2006] EWHC 2378 (QB) [28].

\(^{165}\) [2008] EWCA Civ 463, [30].

\(^{166}\) [2000] All ER (D) 1148 (QB, Comm Ct) [96], aff’d: [2001] EWCA Civ 209.

\(^{167}\) [1977] RTR 219 (Ch).
On a conclusory note, the Table below sets out the key differences between the two torts:

<table>
<thead>
<tr>
<th></th>
<th>Private nuisance ...</th>
<th>Public nuisance ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>what rights and</td>
<td>the tort is concerned with D’s interference with C’s use and enjoyment of land</td>
<td>the tort covers a wide variety of interferences with rights and interests (which may, but do not need to, arise out of an interference with C's land or any premises in which C has a legal or equitable interest)</td>
</tr>
<tr>
<td>interests are protected</td>
<td></td>
<td></td>
</tr>
<tr>
<td>who can sue</td>
<td>private individuals or entities</td>
<td>those individuals/entities who suffer special damage, and also, a local authority, or the AG, in relator action on behalf of the public</td>
</tr>
<tr>
<td>the rules of standing</td>
<td>the tort requires an appropriate proprietary or possessory interest in the land on C's part</td>
<td>the tort requires no proprietary or possessory interest in the land, but where C is an individual or entity, C must prove some 'special damage' arising from the interference</td>
</tr>
<tr>
<td>type of damages</td>
<td>personal injuries are not recoverable</td>
<td>personal injuries are recoverable</td>
</tr>
<tr>
<td>recoverable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>the basis of liability</td>
<td>is a tort only</td>
<td>can be a crime and a tort (the latter only with proof of special damage)</td>
</tr>
<tr>
<td>defences</td>
<td>the defence of prescription is available</td>
<td>prescription is not available as a defence</td>
</tr>
</tbody>
</table>