

LECTURE 2

OIL POLLUTION CLAIMS AND PUBLIC NUISANCE

UNDERSTANDING PUBLIC NUISANCE IN ENVIRONMENTAL CONTEXTS

Consider the comparison: allowing draught horses to leave waste outside a London coffeehouse is akin to permitting a vessel to discharge oil improperly at sea. Similarly, operating an unregulated brothel in a residential area can be likened to reducing ferry services between Gravesend and Tilbury or running an unsafe, single-hulled oil tanker that later causes environmental catastrophe. Just as quarry blasting that sends stone debris into neighboring areas constitutes public nuisance, so too does constructing a jetty that leads to excessive siltation in a river. These scenarios illustrate the broad application of public nuisance law.

THE LEGAL FRAMEWORK OF PUBLIC NUISANCE

Public nuisance is an offence under English common law that can also lead to civil claims in tort. Legally, an individual is guilty of public nuisance if they commit an unlawful act or neglect a legal duty in a manner that endangers public health, safety, property, or general well-being, or obstructs the rights commonly enjoyed by the public.

While the law of public nuisance has been criticized for its broad and flexible nature, it remains significant due to its adaptability in areas not covered by specific legislation. In the 2006 case of **R. v Rimmington; R. v Goldstein**, the House of Lords upheld the offence's validity, dismissing concerns that it lacked clarity. According to Lord Bingham, the definition remains precise enough to guide legal advisers in determining whether an act is likely to cause harm to a substantial section of the public. Lord Rodger similarly emphasized that while the law might not be perfectly formulated, its application ensures that potential offenders understand the risks involved.

This discussion raises an important question: How does public nuisance law apply to environmental pollution, particularly oil spills? This paper argues that public nuisance law provides a crucial legal avenue—often the only viable option—for individuals and communities suffering losses due to marine pollution and its onshore consequences.

CASE STUDY: THE SEA EMPRESS OIL SPILL

A significant example of oil pollution with widespread consequences is the Sea Empress disaster. On February 15, 1996, the Sea Empress, a single-hulled oil tanker, was en route to Milford Haven carrying 130,994 tonnes of light crude oil. Upon striking mid-channel rocks, the vessel immediately spilled 2,500 tonnes of crude oil, later grounding in Mill Bay.

Over the next six days, worsening weather conditions complicated salvage efforts, leading to an additional spill of 69,300 tonnes of crude oil and 500 tonnes of fuel oil—most of which entered the sea less than a mile from the coast.

The environmental and economic fallout was severe. Fishing bans were imposed across Pembrokeshire and South Carmarthenshire, devastating the local fishing industry. The timing, just before the Easter holiday season, further exacerbated the damage to South Wales' tourism sector. While major cleanup efforts mitigated some damage within six weeks, oil remained on beaches for over a year, with remnants still found in rock pools three years later.

LEGAL AND ECONOMIC REPERCUSSIONS

In the case of ***Environment Agency v Milford Haven Port Authority (1999)***, the MHPA was prosecuted under the Water Resources Act 1991 for its role in the disaster, receiving an initial fine of £4 million, later reduced to £750,000 on appeal. The impact of the pollution extended beyond the direct environmental harm:

- Over £60 million was spent on cleanup operations.
- Fishing and shellfish harvesting were banned for months.
- Thousands of seabirds and marine species suffered significant mortality.
- Tourism-related businesses experienced substantial financial losses.

A broad range of claims arose from the disaster, including:

1. Damage to property, such as fishing boats and jetties.
2. Land contamination, both along the shoreline and further inland.
3. Financial losses in the fishing industry, including those indirectly impacted, such as seafood processors and equipment suppliers.
4. Economic harm to the tourism sector, affecting hotels, restaurants, and associated businesses.

Given the extensive and far-reaching consequences of oil spills, the doctrine of public nuisance appears particularly relevant in addressing the collective harm inflicted on coastal communities.

PUBLIC NUISANCE AS A LEGAL TOOL FOR ENVIRONMENTAL DAMAGE

Historically, public nuisance law has been used to address harm that broadly affects communities, as exemplified in ***Blackstone's Commentaries on the Laws of England***. The legal precedent suggests that widespread physical and economic damage caused by pollution aligns with the principles of public nuisance, which focus on the infringement of public rights.

A more recent terrestrial example is the 2005 Buncefield oil depot explosion in Hertfordshire, where widespread environmental contamination led to legal claims against Total, the responsible party. In this case, public nuisance claims were instrumental in securing compensation for affected residents and businesses.

Oil pollution incidents, such as the **Sea Empress disaster**, highlight the necessity of legal mechanisms to address large-scale environmental harm. Public nuisance law serves as a critical tool in seeking redress for affected communities, reinforcing the need for accountability in cases where pollution disrupts public rights and livelihoods.

THE EVOLUTION OF PUBLIC NUISANCE AS A TORT

To fully grasp the unique characteristics of the tort of public nuisance, it is essential to examine its historical development. This tort emerged from criminal law and gradually became distinct from other similar legal claims. Notably, judicial analysis of public nuisance frequently begins with its historical foundations, as seen in cases such as **R. v. Rimmington** and **R. v. Goldstein** (2006) in the criminal context and **Colour Quest Ltd v. Total Downstream UK** (2009) in the civil context. The legal principles governing public nuisance have remained remarkably consistent over time, highlighting the significance of its development in understanding its modern application.

ORIGINS OF NUISANCE IN COMMON LAW

The concept of nuisance in common law arose from the need to protect landowners' rights and interests. Initially, legal remedies were provided for those dispossessed of their land through actions such as the Writ of Right and, later, the Assize of Novel Disseisin, which allowed recovery of property. Additionally, trespass actions were established to address unauthorized entry and damage to land.

However, landowners could suffer interference with the enjoyment of their property without direct dispossession. Early legal scholars, such as Bracton in the 13th century, discussed scenarios where a neighbor's actions—such as constructing a dam that disrupted water flow—could negatively impact adjacent properties. This concept was later reinforced in **Aldred's Case** (1610), which addressed issues like foul odors making a dwelling uninhabitable.

To address these issues, the Assize of Nuisance was introduced as a modification of the Assize of Novel Disseisin. This action allowed landowners to seek remedies against those who interfered with their property rights, leading to the broader development of nuisance law. By the 17th century, nuisance claims could be brought under an action on the case, providing flexibility for plaintiffs seeking relief from interferences affecting their land.

DISTINCTION BETWEEN PRIVATE AND PUBLIC NUISANCE

Over time, legal distinctions emerged between private and public nuisance.

Private nuisance involved specific harm to an individual's use and enjoyment of land, such as pollution, noise, or obstructed access. In contrast, public nuisance concerned actions that harmed the general public, such as blocking roads or contaminating water sources. Courts recognized that these public harms needed to be addressed through criminal prosecution or government action rather than individual lawsuits.

Legal scholars, including Professor Newark, emphasized that public nuisance dealt with broader community interests rather than individual property rights. Historical cases illustrate this distinction—blocking a private right of way was considered a private nuisance, while obstructing a public highway was classified as a public nuisance.

