

LECTURE 3

LEGAL PRECEDENTS AND THE EVOLUTION OF PUBLIC NUISANCE

INTRODUCTION

Cases such as **Wigg's Case (1705)** and **Hall's Case (1671)** reinforced the principle that nuisances affecting the community at large were treated as public nuisances. These included activities like maintaining unsanitary conditions in public spaces, obstructing streets, or operating dangerous businesses in populated areas. By the 19th century, legal references such as Archbold's 1822 writings identified various public nuisances, including keeping wild animals in public areas and maintaining hazardous structures near roadways.

Because public nuisance affected the community rather than individuals, legal action was primarily pursued through criminal charges or injunctions brought by government authorities, often through the Attorney General acting on behalf of the public. As Lord Bingham of Cornhill stated in **R. v. Rimmington** and **R. v. Goldstein**, public nuisance addressed harms suffered by the community rather than private landowners.

THE REQUIREMENT OF SPECIAL DAMAGE

An important legal principle in public nuisance is the requirement that a claimant demonstrate special damage distinct from that suffered by the general public. This principle, first articulated in **Sowthall v. Dagger** (1535) and later reaffirmed in **Fowler v. Saunders** (1617), established that individuals could seek compensation only if they suffered unique harm beyond what was experienced by the broader community.

This concept extended beyond physical injury to include economic losses. Cases such as **Iveson v. Moore** (1699) and **Wilkes v. Hungerford Market Co** (1835) recognized that businesses could recover damages if their trade suffered due to a public nuisance obstructing access to their premises. This principle remains relevant in modern cases involving disruptions to business operations caused by public nuisances.

The historical development of public nuisance highlights its evolution from a criminal offense to a distinct area of tort law. While private nuisance focuses on individual property rights, public nuisance addresses broader community welfare. The legal requirement of special damage ensures that only those who suffer unique harm can bring private claims, preserving the role of public authorities in addressing widespread nuisances. This foundational understanding continues to shape contemporary legal interpretations and applications of public nuisance law.

DISTINGUISHING PUBLIC NUISANCE FROM PRIVATE NUISANCE

Public nuisance and private nuisance share historical origins but have evolved into distinct legal concepts with overlapping yet different applications. While the criminal offense of public nuisance originated from the tort of private nuisance, the tort of public nuisance later emerged from the criminal offense. Despite their similarities, key differences set them apart.

Historically, public nuisance developed from cases involving highway obstructions, expanding over time to encompass a broad range of public welfare concerns. This makes public nuisance far more extensive in scope than private nuisance, which is primarily concerned with land-based interference. The tort of public nuisance arises when an individual suffers special harm due to a broader public nuisance, which is seen as a legal anomaly resulting from historical developments. Consequently, although these torts may overlap, public nuisance extends beyond private nuisance in various ways.

OVERLAPPING NATURE OF PUBLIC AND PRIVATE NUISANCE

It is important to note that private and public nuisance are not mutually exclusive, and a single act may constitute both. This was demonstrated in **Fritz v Hobson** (1880), where an antique dealer successfully claimed both private nuisance (due to obstruction of his shop entrance) and public nuisance (from the obstruction of public pathways). Similarly, in **Colour Quest Ltd v Total Downstream UK** (2009), arising from the 2005 Buncefield explosion, the court rejected the argument that claims in public and private nuisance were mutually exclusive. The judgment clarified that while private nuisance involves interference with land use, public nuisance concerns threats to public health, safety, and comfort.

Moreover, public nuisance is not strictly limited to land-related rights. As seen in **R v Rimmington; R v Goldstein** (2006), public nuisance has a much broader application beyond interference with land. In **Corby Group Litigation v Corby Borough Council** (2008), the court ruled that public nuisance could encompass claims for personal injury, rejecting the notion that it must be tied to land-based interference.

CLASSIFICATION OF PUBLIC NUISANCE

Public nuisance can be categorized into two main types:

1. Cases that overlap with private nuisance, where interference with land affects a larger group of people than usual in private nuisance claims.
2. Cases that do not meet the private nuisance requirement of land interference but instead impact public safety or convenience.

This classification is reflected in **Jan de Nul (UK) Ltd v NV Royal Belge**, where dredging operations caused silting that affected commercial operations and oyster beds. The court acknowledged that while public nuisance can involve land interference similar to private nuisance, it is not fundamentally restricted to it.

RELEVANCE OF PUBLIC NUISANCE IN MODERN OIL POLLUTION CASES

Public nuisance remains relevant, particularly in environmental and oil pollution cases. Unlike negligence, which requires proof of duty and breach, public nuisance provides a broader framework for holding defendants accountable for widespread harm.

For example, in an oil spill incident:

- A fisherman whose nets and lobster pots are damaged by oil may claim negligence for economic loss but may also claim public nuisance if the pollution affects the broader community.
- If oil contaminates a ferry slipway or a jetty, claims in private nuisance and negligence may arise, but public nuisance claims may be possible if the pollution impacts the public at large.

Despite overlaps with negligence and private nuisance, public nuisance remains a vital legal tool, particularly where broader community interests are affected. Differences in proof requirements and fault standards further justify its continued relevance in modern law.

