**AQA : A LEVEL LAW**

**PAPER 2 – TORT**

**Your Name;**

**NUISANCE & RYLANDS v FLETCHER**

**(Once you have completed this topic and workbook – you will need to file it in your Folder for Unit/PAPER 2).**

**Nuisance and the escape of dangerous things;**

* Private nuisance.
* The rule in Rylands v Fletcher.

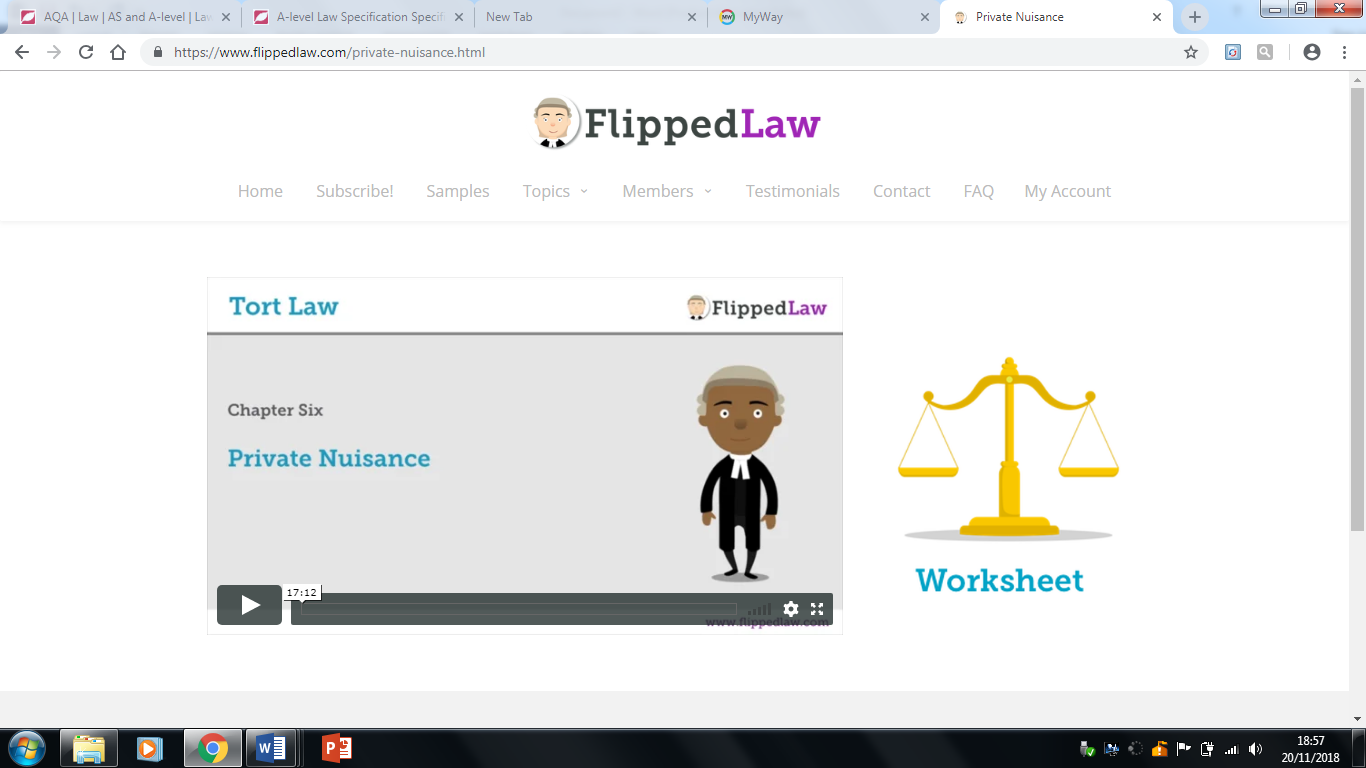
Further Reading and additional learning materials

**Private Nuisance**

**Year 2 – AQA A Level Law for Year 2 (Hodder); pages 163-170**

**Tort Law for AQA A Level – Part 2 – Sally Russell pages 45-61**

<https://www.flippedlaw.com/private-nuisance.html>



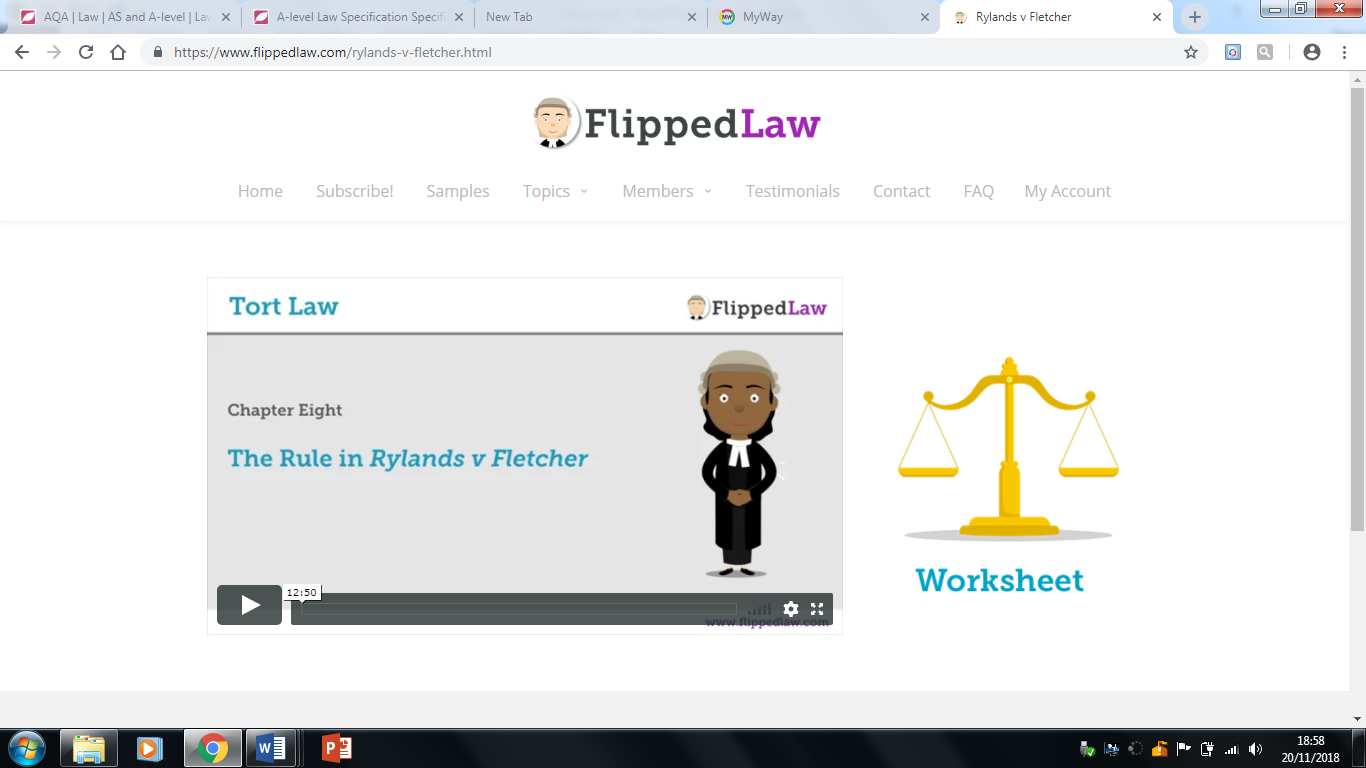
<https://www.youtube.com/watch?v=1tLJXtbOOJk> (47;45) an in depth look at the reasoning of 3 key cases within private nuisance and an introduction to further remedies within nuisance cases.

**Rylands v Fletcher**

Year 2 – AQA A Level Law for Year 2 (Hodder); pages 171-177

Tort Law for AQA A Level – Part 2 – Sally Russell pages 62-70

<https://www.flippedlaw.com/rylands-v-fletcher.html>



<https://www.youtube.com/watch?v=m86weNX_1t8> (animated facts of Rylands v Fletcher 1;48)

**Private Nuisance**

**Introduction;** Private nuisance is concerned with protecting the rights of an **i**ndividual in respect of unreasonable interference with the enjoyment or use of their land.

* ***You need to learn this definition of what is a private nuisance;***

***“It is the unlawful interference with another person’s use or enjoyment of land in which they have an interest”.***

* Key elements of the tort – to succeed in an action for Private Nuisance:

1. **Valid claimant and a Valid defendant**
2. **Unlawful Interference**
3. **Damage**

* The parties to an action in private nuisance are generally neighbours and the courts undertake a ‘balancing exercise’ between the ‘competing rights’ of a land owner to use their land as they choose and the right of the neighbour not to have their use or enjoyment of land interfered with.

A vast range of interferences are capable of amounting to an actionable nuisance.

Some **examples include**:

* **Nuisance from flooding** - Sedleigh-Denfield v O' Callaghan [1940]
* **Nuisance in the form of smells** - Wheeler v JJ Saunders [1996]
* **Encroachment by tree branches or roots** -Lemmon v Webb [1894]
* **Nuisance noise** - Kennaway v Thompson [1981]
* **Cricket balls** - Miller v Jackson [1977]

**Some interferences are not capable of giving rise to an actionable nuisance:**

* Interference with television reception Hunter v Canary Wharf [1997]
* Interference with a view.

Not every intentional interference with land can be classed as a nuisance – only those which are classed as **unreasonable.**

1. **PRIVATE NUISANCE – WHO CAN SUE ?**

Private nuisance is a ‘land based tort’.

* CLAIMANT - In order to bring a claim in private nuisance, **a claimant must have a legal interest in the land in general this means a right to exclusive possession**  *Hunter v Canary Wharf –* and those lacking such an interest cannot sue

Consider and circle from the list below - who can have an actionable ‘interest to land’; who can be a valid claimant?

* An owner of a house
* A tenant of a house
* A member of the owner’s family
* A temporary visitor
* A hotel guest

**DEFENDANT -**

**The defendant is the party who is causing or allowing to cause the nuisance (and does not need to have a legal interest in the land – so who can be D’ can be very wide);**

this can be an owner or occupier or another “creator “ of the nuisance– The current occupier is the usual defendant. (Note that the original creator of the nuisance can still be liable even where the land is later occupied by others

**WHO IS AN OCCUPIER ?**

**Definition =**

* Consider who can be a potential defendant to a claim in private nuisance ? Tick who can be sued
* An owner of a house
* A landlord
* A tenant
* A local authority
* A member of the owner’s family or friend/visitor to the premises.
* A trespasser

Action can be taken against any party who is causing interference with another person’s use or enjoyment of land in which they have an interest.

The D will be liable for nuisances they have created whether by positive acts or by failing to take steps e.g. failing to repair a roof that becomes dangerous

Read the following leading case on Private Nuisance (below) and answer the questions below

**\*\*\*\*LEADING CASE: Hunter v Canary Wharf [1998**]\*\*\*\*

Facts; 690 claims were made against Canary Wharf ltd.

The claimants lived in the Isle of Dogs and complained that the erection of the Canary Wharf Tower interfered with their television reception.

In addition, a second action against London Docklands Development Corporation involved 513 claims for damages in respect of excessive amounts of dust created during the construction of the tower.

Some of the claimants were owners or tenants of properties, but many of the claimants had no proprietary interest, some were children living with parents, some were relations or lodgers with use of a room and some were spouses of the tenant or owner of the property.

The two issues the House of Lords were required to consider in this case were:

1. Whether interference with television reception was capable of giving rise to an actionable nuisance.

2. Whether a legal interest in the property was required to bring an action in nuisance for each party/claimant.

***Held/Judgement:***

***1. There is no right of action in nuisance for interference with the television reception. Q1 - Why was this?***

***2. An interest in property is required to bring an action in nuisance, for all claimants. Q.2 – So who was excluded from claiming?***

***NOTE -***  As many people now work from home and the Human Rights Act 1998 is now in force, could this case be decided differently now by the Supreme Court? (see your textbook page 164 paragraph 15.1.1)

**Can an Occupier be liable in nuisance for the acts of a Third Party/Trespasser or on the basis of a state of affairs?**

**Sedleigh-Denfield v O’Callaghan**

**Trespassers (the council)** had laid a pipe on the defendant’s land designed to divert flood water, following previous less-serious incidents, the pipe was blocked as no effective grating to keep out rubbish had been installed. The claimant’s land was flooded.

Held: The defendant was liable. An occupier may be liable for the acts of a trespasser if t**hey adopt or continue the nuisance**, even when the occupier didn’t know – the test here is objective – Occupiers will “continue” a nuisance where they knew or should have known of it and so are liable.

* What do you think about Fault level for liability here ? Is it High or Low?

**State of Affairs: an Occupier may be liable even for a one off event based on a continuing state of affairs - naturally occurring event.**

* **Leakey v National Trust (1980)** Held; D can be liable for nuisance caused by a naturally occurring event – in this case a build up of land on a neighbouring property created a land slippage onto next-door property causing damage - d held liable on the basis they knew or should have known of this land build up this and did nothing to prevent it (i.e. created a state of affairs as seen later in Ryland’s v Fletcher).

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **The elements of Private Nuisance**  **Unlawful Interference**   * **Unlawful –** an interference on its own may not be sufficient for a claim, as here C must establish that D’s use of the land is unreasonable, with regards to how it impacts and affects C. Here the courts look to balance conflicting interests of the parties and will look to consider a certain amount of ‘give and take’ between the parties with regards to the nuisance.   **Factors to be balanced by a Judge when deciding Reasonableness;**  The interference must involve an unlawful (unreasonable) use of land. – The courts will take into account any relevant factors when determining whether the use of land is unreasonable:   1. **Frequency and Duration =** Frequency & times at which eg noise occurs; how long the noise has been complained about; intensity/level of noise. A one off or temporary act is not generally enough to amount to a nuisance, however see   **Spicer v Smee 1946**  A fire broke out on the defendant’s property caused by faulty wiring, which had been a continual problem and concern for local residents which the landlord failed to respond to. The fire spread to a neighbouring property owned by the claimant. The claimant’s action for nuisance succeeded.  **De Keyser’s Royal Hotel v Spicer Bros (1914)**  An injunction was granted to prevent building work taking place at night despite the fact the work was only temporary in nature. The interference was considered unreasonable since it interfered with the claimant’s sleep.     1. **Locality =** Nuisance is concerned with the use of land therefore the character of the neighbourhood and the type of area i.e. a residential, rural or industrial area will be considered differently.   Note that where there is physical damage to property that Locality will not generally be a factor.see  **St Helens Smelting v Tipping 1865:**  Claimant owned a manor house with 1300 acres of land which was situated a short distance from the defendant’s copper smelting business, this generated a very unpleasant vapour which affected people as well as plants in his grounds.  He brought a nuisance action against the defendant in respect of damage caused by the smelting works to their crops, trees and foliage. There were several industrial businesses in the locality including and alkali works.  The defendant argued that the use of property was reasonable given the locality and the smelting works existed before the claimant purchased the property.  **Held;** Where there is physical damage to property, the locality principle has no relevance. It is no defence that the claimant came to the nuisance, D = liable for the nuisance.  As Thesiger LJ stated in *Sturges v Bridgman*; see below  "*What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey*"    **Sturges v Bridgman (1879)**  The defendant ran a confectionary shop which operated a noisy pestle and mortar. It had done so for over 20 years but had no neighbouring property so there were no complaints as to its use. The claimant then built a consulting room for his practice as a physician adjacent to the defendant’s noisy shop. The claimant brought an action in nuisance to obtain an injunction to prevent the continuance of the noise. The defendant, relying on the Prescription Act, argued that he had obtained the right to be noisy by operating the noisy pestle for over twenty years.  **Held:** The use of land prior to the construction of the consulting room was not an actionable nuisance and therefore it was not capable of founding a prescription right.   * **At what point was the Nuisance created?** * **What does “Prescription” mean ?** * **From when does the “Prescription” time of 20 years start to run ?**      1. **Sensitivity =** if the claimant is particularly sensitive or carries out an activity which is unusually sensitive, they are likely to find that despite the inconvenience caused to them, no nuisance has been committed and this will often defeat a claim for nuisance.For example a person who is overly sensitive and able to hear high pitched noises compared to the average person who does not hear them, is unlikely to succeed on this issue alone.   **Network Rail v Morris 2004 CA**  Rail company installed signaling which interfered electromagnetically with the D’s nearby recording studio  Held no nuisance – C was unusually sensitive – also no-one else had complained  **See also**  **Robinson v Kilvert 1889**  The claim failed because the claimant’s paper was abnormally sensitive  as it was sold by weight. The hot, dry conditions reduced its weight and  hence its value. ‘Normal paper’ (not sold by weight) would have been  unaffected by the defendant’s interference.  2. If normal paper had been affected (even if to a lesser extent), then a  nuisance could have been established. The defendant’s use of the cellar  would have been unreasonable and the claimant would have successfully  recovered for all his loss.   1. **Malice and motive =** the motive for an action will not affect whether or not the nuisance is regarded as a tort (this will be considered in light of reasonableness) however malice or a bad motive, can have the effect of making what would otherwise be a reasonable and lawful activity and therefore not a nuisance into an unreasonable activity and therefore unlawful and a nuisance   **Christie v Davey (1893)**  The claimant was a music teacher. She gave private lessons at her home and her family also enjoyed playing music. She lived in a semi-detached house which adjoined the defendant’s property. The defendant had complained of the noise on many occasions to no avail. He took to banging on the walls and beating trays and shouting in retaliation.  **Held:** The defendant’s actions were motivated by spite and therefore did constitute a nuisance.  An injunction was granted to restrain his actions.  **Hollywood Silver Fox Farm v Emmett (1936)**  The claimant bred silver foxes for their fur. Silver foxes are particularly timid and if disturbed when pregnant they are prone to miscarry. The defendant was the claimant’s neighbour. He objected to the fox farm and fired a gun on his own land close to the breeding pens with the intention to scare the foxes and impede breeding. The claimant brought an action in nuisance.  **Held**: The defendant was liable.  **So – Malice will convert a lawful activity into an unlawful activity**  **5. State of Affairs see above Spicer v Smee & Leakey v National Trust** this is where something is ‘continuous’ rather than happening in frequently, for example a continual noise, light or smell.  **Social benefit = no defence to a claim for nuisance in itself-**  If an activity is for the benefit of the public it is less likely to be considered a nuisance, but it will not determine this question. Whether an activity has social benefit will impact on the remedy  – see the changing position now from **Adams & Ursell** **1913** to **Miller v Jackson 1977** below  **Adams v Ursell 1913**  Local fish & chop shop was in a residential area– excessive smells amounted to a nuisance – Although the shop was found to provide a social benefit – ie employment convenient food etc it was still deemed to be a nuisance & an Injunction was still awarded (\*despite the hardship to the shop owner)– would this be the case today ? See **Miller v Jackson** below  **Miller v Jackson 1977**  The defendants were members of the Lintz Cricket Club. Cricket had been played at Lintz cricket ground for over 70 years. The land was owned by the National Coal Board (NCB) who also owned some fields surrounding the grounds. Four years prior to the action, the NCB sold one of the fields and a development of new homes was put up in close proximity to the cricket ground. Mrs Miller purchased one of the houses and brought an action against the cricket club seeking an injunction to prevent them playing cricket at the ground.  Initially quite a number of balls were hit over the houses. However, in 1976 the cricket club erected a higher fence and the number of balls hit out was reduced to nine over a two year period.  There had been no personal injuries resulting from the balls but some property damage had been caused which the cricket club had paid for. Mrs Miller complained that she could not use her garden during matches and would often stay out of the house altogether.  **Held:**  The defendants were liable in both negligence and nuisance (Lord Denning dissenting) However, Cumming Bruce LJ refused the injunction on the grounds that it would be unfair to grant an injunction given that the cricket ground had been used for so long and would be a loss to the community and Mrs Miller received the benefit of being adjacent to an open space.  [ Lord Lane would have granted the injunction stating that the decision in [Sturges v Bridgeman](http://www.e-lawresources.co.uk/cases/Sturges-v-Bridgeman.php) involves the assumption that it is no defence for the defendant to show that they came to the nuisance ]  **Would the following activities amounts to ‘unreasonable interference ? – What factors are relevant to each scenario?**   |  |  |  | | --- | --- | --- | | **Scenario** | **Relevant factors to consider =** | **Balancing these factors, do you think this would amount to a Private Nuisance?** | | A social club in a residential area which hires out its function room every weekend in the summer for Prom parties. |  |  | | Exceptionally loud water pipes which constantly rattle whenever water is used in the building, the landlord knew about this problem before you moved in. |  |  | | Noisy road works taking place in the middle of Oxford Street at midday to 8pm. |  |  | | Noisy machinery used in a residential garden for a home business creating health products. |  |  | | A constant buzz of electricity lines over head on a small housing estate. |  |  | | The running of a brothel in a respectable residential area. |  |  |   **Now research the following case**  **Coventry v Lawrence 2014 SC**  Land used for a race track since the 1970s. Claimant moved nearby & complained about noise bringing an action in nuisance. The SC has restated the law on the approach to take when dealing with Nuisance claims  1 **Who was liable in Nuisance** ?– the Landlord **Y/N**  - The operator of the track **Y/N**  **2. Moving to the nuisance** : What did the SC say about this? Can it ever be a defence?  **3. Prescription**: Can you now explain this defence ?  **4. Planning Permission** – Can this be a defence ? If so when  **5. What was the remedy here**? an injunction or damages?  **3. DAMAGE**  **Cambridge Water Co v Eastern Counties Leather 1994**  Lord Goff stated that the foreseeability of harm is necessary to the recovery of damages in private nuisance’. In other words, the same test for remoteness of damage (the ‘*Wagon Mound*’ test) applies as in Negligence.  What the court must decide, therefore, is whether the kind of damage which occurred was reasonably foreseeable to someone in the defendant’s position at the time the relevant acts were done. In the *Cambridge Water Co* case itself, the type of harm (contamination of water) was not reasonably foreseeable see Rylands v Fletcher  FAULT ? liability in nuisance does not depend on the defendant’s fault. Lord Goff said:  *‘... as I have said, it is still the law that the fact that the defendant has taken*  *all reasonable care will not of itself exonerate him from liability, the relevant*  *control mechanism being found within the principle of reasonable user’. Fault*  *does, however, have a role to play, but at the remoteness stage. Liability* in  *private nuisance will only attach to uses of land which involve a foreseeable*  *risk of harm*  **DEFENCES; to a claim of Private Nuisance;**  **1. Prescription**  The defence of prescription arises if the defendant can show that he has been  continuing the nuisance for a period of at least 20 years against the claimant.  The effect of prescription is that the defendant has ‘acquired’ the right to commit the nuisance. The defence is rarely available, however, as the interference must have been actionable by the particular claimant for at least 20 years.   * What cases have you seen on this ? Make a note here   **2. Statutory authority**  Sometimes a statute will permit a defendant to commit a nuisance. In such  cases, the defendant may be able to rely on the defence of statutory authority if  it can show that the nuisance was an inevitable result of doing what the statute  authorised. This can be a defence to any tort, but it most commonly arises in  relation to nuisance claims. It is unlikely to be available to private individuals,  and is of most use to public authorities acting under statutory powers.  **See Allen v Gulf Oil Refining Ltd [1981**  An oil company is authorised by an Act of Parliament to construct an oil refinery in a particular location. Local residents complain about the noise and vibrations emitted from the refinery. The oil company is likely to be able successfully to plead statutory authority as a defence on the basis that the operation of the refinery is implicitly authorised by the Act of Parliament and the nuisances are, therefore,  Inevitable  **3. Planning Permission**  The view of the courts is that only Parliament can take away private rights  to sue (by primary or secondary legislation). Therefore, the mere grant of  planning permission (which is granted by local authorities and not Parliament)  does not legitimise a nuisance.  See **Wheeler v Saunders[1995,** a farmer obtained planning permission to build a pig unit on his land. The owners of some holiday cottages on adjacent land complained of the smell and noise emitting from the pig unit. The farmer was not allowed to claim in his defence that he had planning permission.  However, the grant of planning permission can operate to change the character of the neighbourhood, which is, as we have seen, a consideration when deciding whether an interference with personal comfort is unlawful.  ***See Gillingham BC v Medway Docks 1992***  The planning authority granted planning permission for a former naval dockyard  to be converted into a busy container port. Local residents complained about  the noise and vibration from the heavy lorries using the port. When deciding  whether this amounted to an unlawful interference, the court said you had  to consider the character of the neighbourhood as it was after the grant of  the planning permission and not as it was before. The residents now lived in  an area that was a container port - in this context the level of noise, etc was  not unlawful.  In **Coventry v Lawrence** the Supreme Court held that, where planning permission stipulates limits as to the frequency and intensity of noise, then such conditions within a planning permission may be relevant in assisting the claimant's action in private nuisance  See also  **4 Contributory negligence**  This partial defence is available to claims in private nuisance.The usual principles apply.- See your Defences WB  **5 Consent**  If the defendant can show that the claimant has specifically agreed to accept the interference, the claimant’s claim in nuisance will fail.- See Dfences WB  **REMEDIES**  Damages  Damages will be awarded for any loss which the claimant has already suffered  by the date of trial.  (**a) Physical damage to the claimant’s land**  Where the nuisance damages the claimant’s land (including buildings on it and  plants growing in it), a claimant will generally be awarded damages to reflect  the cost of repairing the damage or, if this is not possible, the loss in value of  the land in question.  **b) Personal discomfort**  Where the claimant has suffered an interference with his personal comfort,  the value of the claim is more difficult to assess. In *Hunter v Canary Wharf* Lord  Hoffman suggested that personal discomfort should be valued by looking at  the loss of amenity value of the land in question (ie the land with the nuisance  being worth less than the land without the nuisance).  **Injunction**  An injunction is an order of the court which restrains the commission of or  continuance of some wrongful act *in the future*.  Injunctions are available in many areas of tort, including nuisance, where  claimants often seek an injunction to stop the defendant’s unlawful interference  from continuing.  (note, however, that an injunction is not available in Negligence)  An injunction is an equitable and therefore discretionary remedy, which means  that although a claimant can seek an injunction, whether or not to grant the injunction is the decision of the court, having regard to all the circumstances  of the case. Injunctions will not generally be awarded where common law damages would be an adequate remedy.  However, common law damages can only be awarded for *past* breaches which  have already occurred. Where a claimant seeks to prevent *future* breaches,  common law damages will not be an adequate remedy. Only an injunction is  adequate in those circumstances.  In **Coventry v Lawrence** the Supreme Court held that the public interest may be a relevant consideration (such as the employees of the defendant losing their jobs if an injunction is granted or whether other neighbours in addition to the claimant are badly affected by the nuisance). Also, where the nuisance complained of has previously been authorised in a planning permission, this may influence the court to conclude that it is in the public benefit that the claimant is awarded damages rather  than an injunction.  Abatement  This involves the removal of the interference by the victim. The victim  must, however, normally give prior notice to the wrongdoer, eg cutting back of tree branches  **Did D create the nuisance?**  If not, is D an occupier who **adop**t**s** or continues the nuisance by X D does not need to an interest in the land.  **NO**  **YES**  **Did the unlawful interference cause the damage?**  **In fact**  **In law**- remoteness test – **Cambridge Water Co** stated Wagon Mound test applied to nuisance ie risk of harm must be reasonably foreseeable to RP in D’s circumstances  **Was there an actionable nuisance? Hunter v Canary Wharf**  Was D’s activity an unlawful use of D’s land?   * Was there Physical Damage to or encroachment on to C’s land? * Did C suffer loss of amenity ie unreasonable interference with C’s use or enjoyment of the land?   **Unreasonableness**-**Balancing factors** to consider – how **serious** was the interference?   * Frequency and duration * Character of locality * (Social benefit/utility of activity- may affect remedies) * Sensitivity of C * Malicious motivation of D * State of affairs   **Does C have an interest in land?** Ie right to exclusive possession of the land?  **CLAIMS IN PRIVATE NUISANCE**  **An unlawful indirect interference with a person’s use or enjoyment of land.**  **YES**  **Does D have a Defence?**   * Prescription * Statutory Authority ? planning consent ?   **Non defences**  D came to the nuisance / Social Benefit    **C ENTITLED TO REMEDY**  **NO REMEDY** |

**PPQS**

Numar owned a takeaway shop selling spicy cooked food in a quiet village. The customers standing in long queues at the shop caused considerable noise, and there were very strong smells from the cooking. Robert bought the cottage next to Numar’s shop. When, after several months of this annoyance, Robert complained to Numar, Numar increased his opening hours.

**Advise Robert as to his rights & remedies against Numar in connection with the noise and smells. [10 marks]**

Marks for this question: AO1 = 3 – Knowledge and understanding, AO2 = 4 - Application and AO3 = 3 – Analysis and Conclusion.

1. Jack bought a house in a narrow road near to a village. Ken’s road haulage business was next door. Ken’s trucks generated persistent noise and dust. After months of this inconvenience, Jack complained to Ken. Ken responded by expanding his business so that the noise and dust got worse.

**Advise Jack as to his rights against Ken [ 10 marks]**

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| **THE RULE OF RYLANDS V FLETCHER (1868).**  If property is damaged or destroyed by something that comes from a neighbouring property (rather than an issue that is affecting the enjoyment of land as would arise under private nuisance) the rule in **Ryland v Fletcher**, allows the party (Claimant) who has suffered this loss to take action against the owner or occupier of the land (Defendant).   |  | | --- | |  |   The rule developed in **Rylands v Fletcher is a tort** in its own rightand was establishedin1868, by the House of Lords.  It states that a defendant is liable if, on his land, he **accumulates** a **dangerous thing** in the course of a **non-natural** use of that land, and the **thing escapes** and causes **reasonably foreseeable damage**.  A defendant needs to be either the accumulator or the occupier of the land and the claimant will need to show that the issues detailed above have been caused by the defendant:  **Rylands v Fletcher (1868)** – from the article on this landmark case (see back of SP) – either summarise the facts of the case or add to the diagram to show what happened in this case.  Then summarise the important legal principle/judgement and answer the questions detailed below;       * Legal Principle/Judgment; the basis of the Rule is that formulated by Blackburn J in Rylands v Fletcher when he said that;     “*a person who for his own purposes brings onto his land and collects and*  *keeps there anything likely to do mischief if it escapes, must keep it in at his*  *peril, and if he does not do so, is. …answerable for all damage which is the*  *natural consequence of its escape. The use of the land must amount to a non-*  *natural use”.*  1. From the quote detailed above number and underline the 4 elements of tortious liability that needs to be achieved, for a successful claim under R v F.  **The 4 REQUIREMENTS of Rylands – and can you detailed how they were achieved in R v F , the first has been completed for you as an example;**   |  |  | | --- | --- | | *Requirement* | *How was this achieved in R v F?* | | 1.  **Bringing onto the land** | The water was not ‘naturally there’ it was brought onto the land to fill the reservoir. | | 2. |  | | 3. |  | | 4. |  |      * From the 2 scenarios detailed below - can you identify which would be most likely to be a claim in Private nuisance and which would be more suitable to a claim under Rylands v Fletcher?  |  |  | | --- | --- | | **Scenario** | **A claim under Private Nuisance**  **or Rylands v Fletcher?** | | 1. A quarry uses explosives to break up rocks and causes rocks to fly high into the air and land on the neighbouring farmer’s cattle killing some of the livestock. |  | | 2. A quarry uses explosives to break up rocks and this takes place from 10- 4pm Monday to Friday. The neighbouring farmer is frustrated with this constant noise which recently has become much louder. |  |   **HOW TO SUCEED IN A CLAIM UNDER THE TORT OF RYLANDS V FLETCHER;**   * The 4 parts identified in R v F must be satisfied by a claimant to succeed. * The defendant may raise a range of different defences (detailed at the end of this SP). * In a problem scenario you will need to identify, define, explain, apply and conclude whether each of the 4 parts in R v F, are satisfied and use case examples as appropriate. * Note – if the defendant did not bring anything onto the land or it is a natural use of the land, private nuisance may be an alternative action.   **THE 4 ELEMENTS TO BE ESTABLISHED IN RYLANDS V FLETCHER;** |
| 1. **Bringing onto the land (also referred to as ‘collecting and keeping’ or accumulating.**   In law, there is a difference between things that grow or occur naturally on the land, and those that are accumulated there artificially by the defendant.  For example, rocks and thistles naturally occur on land and would not amount to ‘bringing onto the land’ but bringing and storing chemicals onto land would. The defendants in Rylands v Fletcher brought water onto the land, what if it had naturally accumulated over time?    The fact that something naturally occurring on the land escapes will not suffice of itself for liability under **Rylands v Fletcher.**  **Leakey v National Trust (1980)** the D’s owned a hill known as Barrow Mump. The Cs homes were at the foot of the hill onto which land has slipped The falls were caused entirely by nature there was no human activity involved that would have caused the fall. The defendants were aware of the risks since 1968. They had taken legal advice and were told that they would not be liable for naturally occurring slides and consequently did nothing to prevent such slides. Following the exceptionally hot dry summer of 1976 and unusually heavy rainfall in the autumn, Mrs Leaky noticed a big crack appear in the bank above her house. She informed the National Trust and offered to pay half the cost of making it safe. Her offer was rejected. A few weeks later there was a large fall. She joined forces with other neighbours to bring an action in nuisance.  **Held**:  The National Trust were liable for a naturally occurring hazard on the land if they are aware of the danger and failed to act with reasonable prudence to remove the hazard..     * This original rule in R v F is very wide and was narrowed in the **Transco case** where Lord Bingham said that the rule in Rylands v Fletcher is engaged only where the defendant’s use of land is shown to be ‘**extraordinary and unusual’**.   **Transco plc v Stockport BC (2003) – Key case;** a water pipe which was owned by the D and which supplied water to a block of flats, leaked, and the water washed away the earth supporting a gas pipe owned by the C, who then had to spend a considerable amount of money making the pipe safe.  The Lords held that because the quantities of water from an ordinary pipe is not dangerous or unnatural in the course of things, the council was not liable  **2. “Of a thing which is likely to cause/do mischief (if it escapes)”.**  This is often referred to as ‘the escape of dangerous things’, but what is brought onto the land need not be dangerous in itself, but need only be dangerous IF it is likely to cause a mischief if it escapes.  This then covers   * 1. **items ordinarily found on land, which becomes dangerous if eg** accumulates & escapes, such as gas, fire, water, toxins from chemicals and animals.   **Recap – what was the “The thing likely to cause mischief if it escapes” in Rylands v Fletcher*[1868]*?**  Or   1. **other things which are not naturally on the land but have also escaped**   **NOTE - There must be an escape, from the land which the defendant has control over.**  **Read v Lyons [1947]**  C was employed by D at their factory, which made explosives for the Ministry of Supply. During the course of her employment an explosion occurred which killed a man and injured others including C. There was no evidence that negligence had caused the explosion. At trial the judge held that the case was governed by the rule in *Rylands v Fletcher* and liability was therefore strict.  The Court of Appeal reversed this decision as the rule in [Rylands v Fletcher](http://www.e-lawresources.co.uk/cases/Rylands-v-Fletcher.php) required an ‘escape of the hazardous matter’. The claimant appealed.  The House of Lords dismissed the appeal. In the absence of any proof of negligence on behalf of the defendant or an escape of dangerous thing, there was no cause of action on which the claimant could succeed.  **Note the factory was being used to make ammunition in wartime (and for this reason was seen as a natural use of land) and therefore the decision could be seen as one of public policy**  **3. Which amounts to a non-natural use of the land.TRANSCO**  What is a natural and a non-natural use is a complex concept and has evolved according to changes in technology and lifestyle, as what may have be considered non-natural in 1868 will be very different in 2019.  Non- natural use is considered to be an ‘extraordinary or some unusual use of the land’.  **Rickards v Lothian (1913)**  A tap overflowed in a part of the building leased by the D and the water escaped to a lower level damaging the claimant’s goods. The D was not liable, as a tap supplied by a pipe was an ordinary and reasonable use of a building.  **Mason v Levy Auto Parts Ltd [1967]**.  The Ds stored flammable material on their land. It ignited and fire spread to neighbouring property. The Ds were held liable as the storage of the materials amounted to a non-natural use of the land.   * The storage of items for domestic use is more likely to be seen as a natural use, despite them being potentially hazardous, - this is different though if stored for industrial use.   **4. Which escapes and causes reasonably foreseeable damage to adjoining property.**   * If the ‘thing’ that has been brought onto D’s land **escapes and causes damage** liability under Rylands v Fletcher, will be complete (unless D can rely upon a defence) and that **damage is caused** to the C’s property. * Note – what is brought onto land need not be dangerous as this can cover very ordinary things such as water, gas, cattle, animals and items to be added to property/land such as structures, fencing, poles, etc. It needs to only be dangerous when it escapes. * For example, horses or cattle grazing in a field is not dangerous whilst on the land and contained, but if the horses or cattle escape it is likely to cause a danger and harm to neighbouring land.   **\*\*\*Cambridge Water v Eastern Counties Leather plc[1994*] \*\*\*–* read through the case detailed below;**  The defendant owned a leather tanning business. Spillages of small quantities of solvents occurred over a long period of time which seeped through the floor of the building into the soil below. The solvents made their way through the earth to the borehole owned by the Claimant water company, some distance away which was used for supplying drinking water to local residents.  Due to a change in the law by way of European directive (governing levels of acceptable contamination), the water was now contaminated at a level beyond that which was considered safe. Cambridge Water had to cease using the borehole & brought actions based on negligence, nuisance and the rule in [Rylands v Fletcher](http://www.e-lawresources.co.uk/cases/Rylands-v-Fletcher.php).  **Held:** Eastern Counties Leather were not liable as the damage was too remote. It was not reasonably foreseeable that the contamination levels changing & the spillages would result in the closing of the borehole. The test is objective – i.e. is it foreseeable by the reasonable person?  The foreseeability of the type of damage is a pre-requisite of liability in actions of nuisance and claims based on the rule in *Rylands v Fletcher* in the same way as it applies to claims based in negligence.  The [*Wagon Mound No 1*](http://www.e-lawresources.co.uk/The-Wagon-Mound-no-1.php) case applies to determine remoteness of damage.  **DEFENCES to a claim under Rylands v Fletcher**   * In essence R v F is a ‘strict liability tort’, in that the defendant may be liable in the absence of any negligent conduct on their part. Imposing liability without proof of negligence is controversial and therefore a restrictive approach has been taken with regards to liability under Rylands v Fletcher. * However there are defences available for D to raise against a claim;  |  |  |  |  | | --- | --- | --- | --- | | **Defence** | **How does this work as a defence?** | **Case** | **Defence available to all tort claims? (ALL)**  **Or exclusive to R v F. (R V F)** | | **1.Statutory Authority** |  | *Transco (2004)* |  | | **2.An Act of God** |  |  |  | | **3.An act of a stranger** |  |  |  | |

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| **REMEDIES for a claim under Rylands v Fletcher;**   * C must show damage or destruction of their property in order for a claim to succeed. * The most common remedy is for damages – which is awarded to cover the cost of repair or replacement of the property damaged or destroyed. * Claims are unlikely to be permitted for personal injury – Cambridge Water [see above] and pure economic loss (see case below;). * It may also be possible to achieve an injunction, if the ‘escape’ is not a one-off event.   **Weller v Foot and Mouth Disease Research Unit;** A virus escaped from the defendant’s premises and affected cattle rendering them unsaleable. The claimant, an auctioneer, brought an action under *Rylands v Fletcher* for loss of profit he would have made had the cattle not been so affected.  **Held:** The claim failed. Pure economic loss is not recoverable under [Rylands v Fletcher](http://www.e-lawresources.co.uk/cases/Rylands-v-Fletcher.php)*.*  Consolidation task – linking R v F to Law and Fault/Law and Morality;  Q. 1) In Rylands, D was liable for the actions of his independent contractors even though there was no fault on his part, does this suggest R v F is a strict liability tort? Yes/No and how? – gives reasons for your answers.  Q. 2) In a claim under R v F does the D need to know of the risk of something escaping ?  Q.3) For a claim under R v F, will D be liable even if they are not at fault?  **RYLANDS V FLETCHER**  Liability for reasonably foreseeable damage to land caused by the escape of a dangerous thing brought to (kept on) land in the course of a non natural use of that land  **RYLANDS v FLETCHER EXAM TECHNIQUE**  **1. Identify issue on facts :–** examiner triggers in scenario for nuisance **NEIGHBOURS**= who suffer **damage to their land/ property** – Damage caused by **something** emanating (moving) from neighbouring land **NOT personal injury or loss of amenity** Eg dangerous chemicals / fireworks/ barrels of poison / large quantities of fertilizer/ water |
| |  |  |  | | --- | --- | --- | | **R v F** | **AO1**  **\*Claimant/Def - as for Nuisance** | **AO2/ AO3**  **R v F= strict liability?** | | **1. Thing likely to do mischief**  **accumulation** | Bringing onto cland or storing on land  1. something which may be dangerous if it escapes **or**  --  2. something not naturally on the land eg its natural but has accumulated \* | The thing need not be dangerous in itself *eg water – but an accumulation may be R v F -*dangerous chemicals on land /fireworks/diesel/fertilizer  **OBJECTIVE test foreseeability– is it likely to do damage ?** | | **2. Escape** | Thing must escape –to neighbouring land & its irrelevant if D tried to make the “thing” safe as its = **SL \*** | Escape from land D controls to land D does not control | | **3. Non natural use** | **Transco**  *An”* ***extraordinary & unusual”*** *use of land or the taking of an excessive/ unreasonable risk*  *Here its HOW the land is being used ie some special use which brings with it an increased danger to other - don’t confuse with “thing” above which is not natural \** | Eg storing/ an accumulation by D of a large quantity of natural things eg fertilizer/ petrol  Or  Unusual use of land/ using land in a dangerous way | | **4. Foreseeability of type of damage** | To RP- ie objective test **Cambridge Water -** *here contamination of water was acceptable then law changed limits- RP couldn’t have foreseen this change in law*  **Wagon Mound –**no need to foresee extent of damage or way in which it occurred – only type of damage | *(Not SL where there is a foreseeablilty requirement ?)* | | **5. DEFENCES** | **STRICT LIABILITY**  BUT act of stranger/ Act of God ?/ consent ? | **State that’s its irrelevant that D did all they could to prevent escape as its SL ie no fault liability** | | **6 REMEDY**  Injunction /Damages | See previous |  | |
| **Paper 2 Q8 – 10 Mark Question**   1. Barry and Clive were neighbours and one day in the summer lighter fuel, which Barry had bought for barbecues, leaked from cans in his shed and seeped into Clive’s garden, destroying Clive’s delicate and rare plants.   **Advise Clive as to his rights and remedies against Barry in connection with the destruction of the plants [10 marks]**  .  **Paper 2 Q8** –  Jack was a chemistry teacher who often conducted chemistry experiments in his garden shed. He used chemicals which he carefully stored in the shed in metal containers. One night, the chemicals exploded. Harmful chemicals and large metal fragments from the containers damaged Ken’s office building.  **Advise Ken as to his rights against Jack. [10 marks]** |

**Paper 2 Q11**

Tina bought and moved into a house in a quiet village next to Hamid.  She grew plants in her garden which she used to manufacture ‘health products’ in her garage. Production involved using noisy machinery for five days each week.  Tina also used fertilizer, to help the plants grow, which she stored in large piles next to Hamid’s fence.  For several months Hamid was forced to endure the constant noise from the machinery and the disgusting smell from the fertilizer.  Tina’s activities also ruined a holiday visit by Hamid’s friend when he stayed with him for a week.  Hamid then decided to get ‘revenge’ on Tina by regularly playing loud music to annoy her. On a separate occasion, fertilizer from Tina’s garden blew into Hamid’s pond, poisoning his valuable fish.

**Consider the rights and remedies, if any, of:**

1.      **Hamid and his friend against Tina regarding the smell and the noise**

2.      **Tina against Hamid regarding the loud music**

3.     **Hamid against Tina regarding his poisoned fish.                                                                                                     [23marks  ]**