

# UNDERSTANDING TORT LAW

## PRIVATE NUISANCE

### 03 APPLICATIONS

**Victoria Park Racing and Recreation Grounds Ltd v Taylor**

**(1937) 58 CLR 479**

In this case, however, in my opinion, the defendants have not interfered in any way with the use and enjoyment of the plaintiff's land. The effect of their actions is to make the business carried on by the plaintiff less profitable, and they do so by providing a competitive entertainment. It is unnecessary to cite authorities for the proposition that mere competition (certainly if without any motive of injuring the plaintiff) is not a cause of action. The facts are that the racecourse is as suitable as ever it was for use as a racecourse.

What the defendants do does not interfere with the races, nor does it interfere with the comfort or enjoyment of any person who is on the racecourse. The alleged nuisance cannot be detected by any person upon the land as operating or producing any effect upon the plaintiff's land. It is consistent with the evidence that none of the persons on that land may, at any given moment, be aware of the fact that a broadcast is being made. The only alleged effect of the broadcast is an effect in relation to people who are not upon the land, that is, the people who listen in or have the opportunity of listening in and who therefore stay away from the land. In my opinion the defendants have not in any way interfered with the plaintiff's land or the enjoyment thereof.

It has been contended that if damage is caused to any person by the act of any other person an action will lie unless the second person is able to justify his action. Many cases show that there is no such principle in the law ...

**“As a general principle, it is difficult to conceive a cause of action from damage when no right has been violated, and no wrong has been done. ... A party may damage the property of another where the law permits; and he may not where the law prohibits: so that the maxim can never be applied till the law is ascertained; and, when it is, the maxim is superfluous”**

**I am unable to see that any right of the plaintiff has been violated or any wrong done to him**

# RIGHTS

## CLAIM RIGHTS V LIBERTIES

- A right (a claim right) = an entitlement held by a person against at least one other person.
  - A person has a right (a claim right) to x if at least one other owes that person a duty in respect of x.
- A liberty = the absence of an entitlement held by another person against one.
  - A person is at liberty to x if she owes no one a duty not to x.

**Raciti v Hughes**

**(1995) 7 BPR 97,601 (NSWSC)**



**Paxhaven Holdings Ltd v A-G**

**[1974] 2 NZLR 185**

**Matheson v Northcote College**

**[1975] 2 NZLR 106**

The truth is that all wrongful escapes of deleterious thing, whether continuous, intermittent, or isolated, are equally capable of being classed as nuisances, the type of harm caused by the escape, the gravity of that harm, and the frequency of its occurrence are each relevant (but not conclusive) factors in determining whether the defendant has maintained on his premises a state of affairs which is a potential nuisance

The true test to determine whether a defendant is under any liability in nuisance lies in whether what the plaintiffs complain of was a natural and probable consequence of letting pupils play unsupervised

But it is said that in any case I ought not to grant an injunction against the defendant Stone on the ground that the van and tent dwellers are alone responsible and that Stone is not. This is an idle contention. It would be impossible for the plaintiffs to get any real relief if they could only sue the temporary dwellers on the land, who have no estate or interest in any part of the land itself and are here to-day and gone to-morrow. Stone is the man who permits these dwellers to occupy the land in the way they do and who alone owns the land is really responsible for the way in which it is being used.