

Noise Nuisance Abatement under Tort Law: Mirage or Reality?

Abu Hena Mostofa Kamal*

“Calling noise a nuisance is like calling smog an inconvenience. Noise must be considered a hazard to the health of people everywhere.”

— Dr. William H. Stewart, former U.S. Surgeon General

Abstract

Lord Lloyd divided private nuisances in three kinds on the base of above theme. These are (1) nuisance by encroachment on a neighbour's land; (2) nuisance by direct physical injury to a neighbour's land; and (3) nuisance by interference with a neighbour's quiet enjoyment of his land.ⁱ This article is primarily concerned with the issues of third criterion of private nuisance. In this article, I am going to address the problem of noise nuisance which interferes with a neighbour's right of quiet enjoyment of his land under the tort law. The text begins by describing the noise nuisance and reviewing factors that provide tortious remedy in prevention of noise nuisance. It further, points out some implications of realizing the conceptual and practical challenges that exist in determining remedies for noise nuisance. It then identifies a series of questions that might assist the reader to probe into the core of the subject matter of the tortious defence i.e. Statutory Provisions. Finally, the essay reviews responses to the problem in the light of evaluative research and court practice. This paper begins with the basic premise that noise is an inescapable feature of modern life and ends by considering the inadequacy of legal remedy for limiting the problems associated with noise pollution.

Key Word: Noise Nuisance, Tortious Remedy for Noise Nuisance, Statutory Nuisance, Aviation Noise and its remedy, Noise Pollution, Pollution-Related Laws.

“The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare.” Noise Control Act of 1972

Introduction

In acoustics, noise is often considered to be unwanted sound. More specifically it can be defined as unwanted or offensive sounds that unreasonably intrude into ones' daily activities when its intensity is such that it interferes with the ability to hear something or causes discomfort, annoyance, and stress. In recent years noise has emerged as one of the important pollutants of environment as its harmful effects are unveiled with the time and progress of science.ⁱⁱ WHO in a recent report affirmed that “noise is capable to affect human health and well-being in a number of ways, including annoyance reaction, sleep disturbance, interference with communication, performance effects, and effects on social behaviour along with hearing loss.”ⁱⁱⁱ The report further

* Assistant Professor, Faculty of law, ASA University Bangladesh

claimed that noise can cause annoyance and frustration as a result of interference, interruption and distraction.^{iv} Further, a study conducted by Gary W. Evans of Cornell University and his associates discovered that chronic exposure to high noise can raise blood pressure and stress levels and cause defects in reading abilities and long-term memory. Other studies show that children exposed to noise from elevated trains and highways at school also perform worse on standardised reading tests than do students at the same schools in quieter classrooms.^v

As said earlier, on some occasion noise can be annoying and cause nuisance if it continues for any length of time exceeding normal level of tolerance. People who are exposed to noise levels high enough to cause nuisance may bring tortious claim against the noise makers under the tort law, if the locality has tortious jurisdiction. For example: if X lives in a residential area and he fails to sleep at night because of the sound of a machine operated by his neighbour, X may sue his neighbour for causing a private nuisance under tort law (this may be the case where tortious remedy is available). In this case X must prove that there has been an invasion of his land as a result of some activity which the respondent has conducted upon his land and such activity is often not itself unlawful.^{vi} But before that, as a resident of a residential area X must make sure that he is not a hyper sound sensitive person and the interference was substantial, unreasonable and continuous. Here court uses objective test to determine whether the noise interference was substantial and unreasonable. It means ‘an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to delicate or dainty modes and habits of living, but according to plain and sober and simple notions..’^{vii} The criteria for determining unreasonable interference will depend on the nature of the damage suffered. In *Heath v Brighton Corporation (1908)*,^{viii} it was held that an Anglican priest who was affected by low frequency noise could not enlist the aid of the nuisance law because the over-sensitive persons were not covered by the prevailing regulations. Therefore, a person ‘with a particularly sensitive olfactory or auditory response is not given any higher standard of protection than a person with ‘normal’ response.’^{ix}

It should be noted that X can take legal action for the noise nuisance by seeking either an injunction to restrain the defendant from causing the nuisance in future or by issuing a claim for damage under Tort law. To succeed in tort law X must show that the following legal obligations are fulfilled. The defendant may escape liability if he successfully takes the defence of any statutory provision, which will exempt him from liabilities for causing noise nuisance.

Essential Ingredients of a Noise Nuisance under Tort Law

For the last twenty five years, tort and environmental lawyers have considered tort law as the source of potentially robust and flexible remedy against community based social and environmental offences like noise nuisance,^x in the absence of proper statutory provisions that fails to deliver appropriate legal solutions. Particularly where the statutory avenues “for redress are deficient and feeble, attention has turned toward restoring the vitality of public nuisance as a supplemental or alternative cause of action.”^{xi} Therefore when a statutory remedy fails utterly in providing justice because of insufficient funds for adequate enforcement, tort law intervenes. In

this case, the primary objective of tort law is to maintain a balance between two competing interests, namely 'that of the defendant to use his land as he wishes' and 'that of his neighbour not to be seriously inconvenienced thereby'.^{xii} It should be mentioned that not all interferences are actionable, and most people are expected to tolerate some degree of inconvenience in the interests of peaceful coexistence. An intrusion or interference becomes unlawful only where the defendant has put his land to an unreasonable use, and the alleged nuisance causes tangible damage to the plaintiff.^{xiii} This is either because, 'in the case of such damage, many of the factors involved in the balancing exercise to determine whether the defendant's use of land is reasonable are irrelevant, or because such damage usually tips the balance irreversibly in the plaintiff's favour.'^{xiv} On the other hand, in the case of amenity damage, the plaintiff must prove a substantial interference with the ordinary comfort and convenience of living such as would adversely affect the average person, and it is in this context that the balancing exercise becomes more critical.'^{xv}

A final characteristic of the noise of nuisance that should be noted is that the normal remedy sought by the claimant is an injunction rather than damages. Sadly, injunctions are granted on a flexible basis reflecting the fact that they form a species of equitable remedy. They may therefore be refused even though an actionable nuisance can be proven.^{xvi}

The extent, to which the courts refuse injunctions where nuisance has been established, should not be exaggerated. In the vast preponderance of cases 'where the claimant can prove the commission of a nuisance, he will succeed in obtaining an injunction, but the process itself is vastly based on discretionary power of judges. The judges' power to refuse a claim for immediate relief like injunction, despite commission of an actionable noise nuisance',^{xvii} enables the defendant to continue the wrongful act. Later in this paper we shall see that the courts have developed a series of factor to which they will have regard before using tortious relief.

Defence Theory: Monkey in the Snakes shadow

The law of statutory nuisance was first formulated in the middle of the nineteenth century. Statutory provisions are the particular nuisance-defence identified in various Acts of Parliament. It is pertinent to note that a statute can exempt an individual from liability for a private nuisance. If the conduct complained of is legislatively approved, it may offer the defendant with a complete defence or immunity from nuisance claims such as exempting a public authority like city council from nuisance liability for sewage discharge or smells, noise etc. It should be mentioned that "no action lies for doing that which the legislature has authorised, if it be done without negligence, although it occasions damage; but an action does lie for doing that which the legislature has authorised, if it be done negligently."^{xviii} For example, in *Allen v Gulf Oil Refining Limited [1981]*^{xix}, the defendant built and operated an oil refinery under the authority of the Gulf Oil Refining Act 1965. The plaintiff was one of a number of residents of the surrounding area who had been adversely affected by noxious odour, vibrations, and offensive noise levels emanating from the refinery. The defendant pleaded statutory authority, and the House of Lords by a majority held that the statute expressly or by necessary implication gave authority to construct and operate the refinery, and that this authority conferred on the defendant immunity from

proceedings for any nuisance which might be the inevitable result of constructing a refinery on the land, however carefully sited, constructed and operated. The question is thus one of statutory construction. However, it should be noted that statutory authority is subject to review in accordance with human rights law; if the authorised activity interferes with a person's right to privacy under Article 8(1) it will be necessary for the government to justify it.^{xx}

Further in *Marcic v Thames Water Utilities Ltd (2004)* it was held that “where these statutes provide self-contained systems for dealing with a failure to abide by their requirements, a claimant must use those systems, and cannot choose to sue in nuisance instead.”^{xxi} The claimant Mr. Marcic in the case lived in a house which was frequently flooded with foul water from a sewer belonging to the defendants. The problem had been going on for nine years, and was steadily getting worse; by the time Mr. Marcic sued, just 15 minutes of heavy rain or a couple of hours of drizzle were enough to flood his house. Despite Mr Marcus spending £16,000 on a new drainage system, the building was badly affected by damp and would have been impossible to sell. The water company were well aware of the problem, but they did not give sufficient priority for the company to address it.

Mr. Marcic sued in nuisance and the Court of Appeal upheld his claim, but the decision was reversed by the House of Lords. It pointed out that the provision of sewerage services was covered by the Water Industry Act 1991, which imposes on the defendants a statutory duty to provide, improve and extend such a system of public sewers ... and so to cleanse and maintain those sewers as to ensure that the area is and continues to be effectually drained. The Act provides that where a company fails to perform this duty adequately, the Director General of Water Services (the independent regulator of the water industry) can make an enforcement order against them. The Act also expressly provides that customers cannot use a private law action to complain about breach of a statutory duty which the Director General of Water Services can enforce by making an enforcement order. The House of Lords held that to allow a nuisance claim would be inconsistent with the statutory rules, and would conflict with the clear intentions of Parliament. As said before statutory provisions do not always act as a shield, rather used as a sword. The above case is the glaring example of this.

As it was mentioned earlier, not all cases of noise nuisance get equal treatment. There are many cases where aggrieved party failed to get an appropriate remedy when their ‘right of peaceful enjoyment of land’ is infringed by the public authority as a result of misuse of statutory provisions. For example, in most countries the concerned airport authority enjoys certain immunity from noise nuisance claim which makes them invincible. But things are changing fast in the court arena. Though the impact of noise nuisance on people living in own homes is not ranked as a criminal offence as far as national legislation is concerned, a tort claim is the only remedy available for the claimant in the presence of a statutory provision. Fortunately, modern courts are at ease in dealing with these kinds of claims, though it is a universally accepted concept that the most robust defence to a noise nuisance action is statutory authority and it is subject to violations. As discussed earlier, where a particular activity is authorised expressly or by implication by a statutory provision or ordinance, in many cases the defendant may enjoy a

complete immunity against the plaintiffs claim. In this circumstance, the court will consider whether the interference was the inevitable result of the statutory authorisation. Put another way, could the nuisance have been avoided through the exercise of reasonable care? It will be for the defendant to show that the nuisance could not be avoided through the use of reasonable care. Here it is worth mentioning that Courts have stepped into abating noise nuisance on more than a few occasion by establishing precedents which are designed to protect innocents right of enjoyment of their premises under tort law in the presence of statutory provisions. The judicial interventions in this arena can be illustrated with the following cases:

The landmark case *Nestle v. City of Santa Monica*,^{xxii} deals with the problem of noise. In that case, the property owners who lived in the vicinity of Santa Monica Airport sued the city for both property and personal injury damages on the ground that vibrations, fumes, and noise from jets landing and taking off at the airport caused damage to their property, interfered with free enjoyment of the property and resulted in pain, suffering and emotional disturbance. The trial court dismissed the nuisance theory on grounds of governmental immunity at the presence of statutory authority. The Supreme Court reversed as to the nuisance count, holding that Government Code section 815 does not give immunity to the city for operating an airport in a manner constituting a nuisance.^{xxiii} The court's discussion in *Nestle* indicates that "public policy does not preclude the imposition of liability on the City."^{xxiv}

In *United States v. Causby (1946)*,^{xxv} the Supreme Court held that "frequent low over flights of the plaintiff's land by military aircraft landing at a nearby installation produced noise that made it impossible to use the property as a chicken farm. And it constituted an uncompensated taking of Causby's property in violation of the Fifth Amendment to the Constitution. The court reasoned that while the enjoyment and use of the land were not totally destroyed by the flights, they limited the use of the land and caused a diminution of its worth."^{xxvi} The court also went on to say that inconveniences caused by airplanes are normally not compensable because they are part of our modern environment and that flights over private land are not taking unless their frequency and low altitude cause them to become ". . . a direct and immediate interference with the enjoyment and use of the land."^{xxvii} But a contrary view was adopted in *Thornburg* case.

In *Thornburg v. Port of Portland (1962)*^{xxviii}, the Oregon Supreme Court rejected any arbitrary limitations "based upon the altitude of the particular aircraft or upon a technical trespass of the air space directly over the homeowner's land. The court held that there could be a taking whenever the government acts in such a way as substantially to deprive an owner of the useful possession of his property."^{xxix} In the second appeal the court held that "[t]he proper test to determine whether there has been a compensable invasion of the individual's property rights in a case of this kind is whether the interference with use and enjoyment is sufficiently direct, sufficiently peculiar, and of sufficient magnitude to support a conclusion that the interference has reduced the fair market value of the plaintiff's land by a sum certain in money. If so, justice as between the state and the citizen requires the burden imposed to be borne by the public and not by the individual alone."^{xxx}

Similarly in *Martin v. Port of Seattle (1964)*,^{xxxii} the Supreme Court of Washington held that there should be no arbitrary distinction between property directly over flown by jet aircraft and that which is not. In Martin the court held that where the flights in question caused such interference with the use and enjoyment of the property, as to result in a measurable diminishment in market value, the government and not the individual homeowner should be required to bear that burden.

In *Ackerman v. Port of Seattle (1960)*,^{xxxiii} property was defined to include the unrestricted right to use, enjoy, and dispose of the land, and the frequent flight of aircraft over the land reducing its market value was held to be a compensable taking of an easement.

In *Griggs v Allegheny County (1962)*^{xxxiv}, the Supreme Court held that the county, as airport operator, was exclusively liable for damage caused by air craft noise. The court refused to hold the airlines liable since they had complied with Civil Aeronautics Administration (CAA) procedures. In addition, the Court concluded that the federal government had not taken the land since it had been county's decision to construct the airport.^{xxxv} The Court rejected the county's argument that it should escape liability simply because the CAA had approved the airport's design. Although the design comported with CAA regulations, the county had controlled the crucial decisions concerning the airport site and the quantity of land allocated for development and therefore, the county was exclusively liable.

In *Greater Westchester Homeowners Association v. City of Los Angeles (1979)*^{xxxvi}, the California Supreme Court held that the plaintiff was entitled to bring separate causes of action for inverse condemnation^{xxxvii} and personal injury resulting from nuisance. Plaintiff may thus collect once for loss of property value and periodically for personal damage. These decisions establish that airport operators will bear exclusive legal responsibility for aviation noise, and the extent of their liability may increase if courts permit separate cause of action for personal injury as well as property damage.

In the English case *Dennis v Ministry of Defence [2003]*^{xxxviii} the High Court considered the effect of noise from Harrier jet fighters operating from nearest Royal Air force Base (RAF) on the Claimant's neighbouring estate. The claimant asserted that the noise emanating from the jet fighters constituted a nuisance at common law and infringed his human rights. An injunction and damages are sought, alternatively damages of some £10,000, 000 under Art 8 of the European Convention on Human Rights (ECHR). RAF airbase had been "operational as a training base for Harrier jump jets since 1969 and it is considered as the oldest established operational station of the RAF as it was first built for the Royal Flying Corps in 1916. Its main runway was two miles from claimants the property which they had, since 1984. This property has been subjected to ongoing noise and interference from so called 'training circuits'. The claimants contended that as a consequence of the noise disturbance, they had been denied the opportunity of exploiting the property for commercial activities and that the noise from the jets had substantially reduced its capital value."^{xxxix}

In this case, the defendants, the Ministry of Defence (MoD) put forward several defences against the claimant's claims. These are as follows: Firstly, they contended that training pilots for the defence of the realm was one of the 'ordinary usages of mankind' and an ordinary use of land. In this case, Buckley J was satisfied that the noise generated by the jets was 'deafening', 'highly intrusive' and 'frightening', thus constituted a serious nuisance and such activities could not be construed as an 'ordinary use of land'. The judge also dismissed the defendant's claim that no action lay because such activity was a feature of the area before the claimants moved to their property. This is significant. It is no defence to claim that an aggrieved landowner came to a nuisance.^{xxxix} RAF Wittering had been the operational and training base for Harrier jump jets since 1969. Buckley J was not moved by this argument. He said the area 'remains essentially rural... it would be odd if a potential tortfeasor^{xl} could itself so alter the character of the neighbour-hood over the years as to create a nuisance with impunity'.^{xli} Secondly, the defendant argued that defence of the realm was in the public interest, which gave the MoD a full immunity. In this case, the court had to decide whether this provides a defence to the claim in common law nuisance, or only affects any remedy afforded. Put simply, RAF Wittering trains the pilots without whom there could be no operational Harrier squadrons to deploy in a UK emergency, in support of NATO and other overseas task. Buckley J suggested that the problem with putting the issue of public interest into the equation when deciding whether a nuisance exists is that private rights must be subjugated to the public interest, and consequently, it might well be unjust that the claimant should suffer the damage for the benefit of all.^{xlii} As a solution, he suggested 'public interest should be considered at the remedy stage. Since the court has discretion, the nuisance could continue but the public, in one way or another would pay for its own benefit.'^{xliii}

But this view was neglected where the undertaking possesses implied statutory authority to create a nuisance^{xliv}, or acts within a statutory framework providing a de facto immunity from liability by exercising all due care, possibly where it carries out functions with associated public benefits.^{xlv} In the case like English case *Dennis v Ministry of Defence [2003]*,^{xlvi} the issue of public interest related to the remedy only give rise controversy as it only provides a temporal remedy not permanent cure to the infringement which is contrary to cases like *Shelfer v City of London Electric Lighting Co [1894]*.^{xlvii} In this case Lindley LJ stated (at 315) that the fact the wrongdoer conferred some public benefit was not a sufficient reason to refuse an injunction. A similar view was adopted more recently by the Court of Appeal in *Elliott v Islington LBC (1991)*^{xlviii}, the court saying 'it was wrong to deprive individuals of their rights for the public benefit.'

In *Powell and Raynor v UK (1990)*^{xlix} the ECtHR^l confirmed that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole."^{li} Furthermore, even if in the public interest, compensation may be payable to those individuals affected.^{lii} On this basis, despite accepting that the public interest in the activity outweighed the claimants' private interests, proportionality demanded they be compensated. Unfortunately the court failed to adequately discuss the ramifications of *Hatton v UK [2002]*^{liii}, which confirms a positive obligation on the state to take reasonable and effective measures to secure the rights of citizens under the ECHR^{liv}.

In *Roper v Tussauds Theme Park Ltd. [2007]*^{lv}, the appellants reside in close proximity to Alton Towers, which is a theme park. They were affected by the noise, which emanated from the park. They, therefore, served a notice under s82 of the Environmental Protection Act 1990 under Scottish Law on the respondent, claiming that the noise amounted to a statutory nuisance in terms of the Act.^{lvi} The magistrates' court in turn held that there was a statutory nuisance, made a noise-abatement order and fined the respondents £5,000. The respondents appealed to the Crown Court, which upheld the appeal. A lower fine of £3,500 was substituted and the new order was made less strict, raising the permissible noise level from 32 to 40 decibels. The appellants appealed to the Queens Bench Division against the terms of the abatement order. Essentially, the appellants were of the view that the order should have imposed more stringent standards on the respondent.^{lvii} The Queen's Bench Division dismissed the appeal. Mr Justice Wilkie held that the Crown Court was justified in refusing to impose a 'more exacting standard' on Alton Towers.^{lviii}

The Indian Supreme Court in *Church of God (Full Gospel) in India v KRR Majestic Colony Welfare Association* (2002)^{lix}, considered a similar issue involving a complaint on behalf of local residents that the use of loud speakers and musical instruments in the appellant's prayer hall caused excessive noise contrary to the Environment (Protection) Act 1986. The High Court had directed the police to ensure that the Church turned their music down. On appeal, the Church claimed that its member's right to practice religion was being infringed. The Supreme Court noted that (1) the right to practice religion is not absolute and is subject to limitations of 'public order, morality or health'; (2) in a civilised society, religious activities disturbing the peace of others cannot be justified (noting that no religion prescribes or preaches that prayers must be performed through voice amplifiers or by beating drums) and that there is no religious right to breach the permissible limits of the 1986 Act; and (3) even if the noise pollution in certain cities may already exceed those limits, this is not a sufficient ground for permitting others to increase the noise.^{lx} Previously in another case similar decision was taken but this case did not involve any statutory provision, but in this case citizens interest was recognised by Indian court.

In *Radhey Shyam v. Gar Prasad Gur Prasad and another* (1987)^{lxi} filed a suit against Radhey Shyam and others for a permanent injunction to restrain them from installing and running a flour mill in their premises. It was alleged that the slid mill would cause nuisance to the plaintiffs, who were occupying the first floor portion of the same premises inasmuch as the plaintiffs would lose their peace on account of rattling noise of the flour mild and thereby their health would also be adversely affected. It was held that substantial addition to the noise in a noisy locality, by the running of the impugned machines, seriously interfered with the physical comfort of the plaintiffs and as such, it amounted to nuisance, and the plaintiffs were entitled to an injunction against the defendants.

Concluding Remarks

After years of study and attempted regulation, noise nuisance remains a significant problem. It has "extracted a heavy toll in human suffering and economic expense. The statutory and case law

that developed in response to the problem has produced a remarkably incoherent result.”^{lxii} Laws are enacted to eradicate the noise problem but with intentional loopholes to protect the tortfeasor. Statutory provisions were designed to act like a shield to defend public interest but in reality it acts as a sword in safeguarding nuisance makers. The consequence of this bifurcation has been a general lack of commitment to the problem and many unsuccessful individual attempts to abate noise nuisance.

It is indeed true that tortious liability assures greater attention to the problem, but action requires strong support from the legislative authority when noise becomes the source of more abrupt nuisance like environmental hazard. International Organizations should provide guidance and authorization for developing legal framework within tort law to abate noise nuisance. In recent times, for the abatement of noise nuisance tortious remedy is only compensation. But new regulations must be formulated to introduce “Polluter Prevention Cost” within tort law to a tortfeasor which will indeed help to eradicate the source of noise on the base of anticipation. In addition, adequate funds should be allocated to create viable noise compatibility planning programs.

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^{vii} *Walter v Selfe* (1851) 4 De G & Sim 315, 322 (per Knight Bruce V-C).

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^{xii} Brenner, Joel Franklin (1974), *Nuisance Law and the Industrial Revolution*, 3 *Journal of Legal Studies*, 403-433.

^{xiii} *Ellison and Headlong -v- The Ministry of Defence* ORB 18 November 1996, [1997] 7 Bliss 13: The case concerned flooding on land adjacent to Greenham Common air field. The air field is now being, for the most part, dismantled and the runways dug up, the intention being to return most of it to open common land. At the time of the events in question it was a NATO air base for which B52 bombers had the capacity to deliver nuclear bombs.

The presence of so much concrete on the common land naturally disturbed the drainage which previously existed, and accordingly a complex system of drainage had been installed which for the purpose of this action was referred to as the 'natural' drainage. Works were being undertaken for the Ministry of Defence for the construction of four bulk fuel installations for the storage of aviation fuel. The works included storage tanks, roads, services, control buildings and other facilities and involved substantial excavation and soil disposal for the construction of the underground tanks. On 10 August 1986, whilst these works were underway, a severe summer storm passed over the airfield. The Ellison and Headlong families lived and operated small businesses in the valley adjacent to the site. At about 7.30pm Mrs Ellison saw that water was coming in through the back door. She then noticed waves of water lapping the kitchen windowsill. Once the flood had passed the devastation was enormous. The force of the water had carried Mrs Ellison's car out of their garage. Some of the family's belongings were retrieved from railway lines a mile down stream. The Ellisons and Headlongs claimed damages from The Ministry of Defence under the law of nuisance and according to the rule enunciated in *Rylands v Fletcher*. They claimed that at the time of the storm, works were being carried out on the air field for the Ministry of Defence and that the flood was caused by interference with the natural drainage as a result of those works. Citing from previous authorities Judge Bowsher was satisfied that this indeed was the case and furthermore that the Ministry of Defence were not in any way at fault for failing to foresee the risk of what in fact happened or the damage that resulted. Judge Bowsher concluded by saying 'to my regret and contrary to my sympathies in the case I find that as a matter of law judgment must be given for the defendants'.

Source: <http://www.brewerconsulting.co.uk/cases/CJ9715RR.htm#>, Retrieved: January, 2008.

^{xiv} *Millar v Jackson* (1977) QB 966 at 986, per Geoffrey Lane LJ.

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- ^{xix} *Allen v Gulf Oil Refining Limited* [1981] AC 1001
- ^{xx} *Hatton v United Kingdom* (2003) 37 EHRR 28
- ^{xxi} *Marcic v Thames Water Utilities Ltd* (2004)
- ^{xxii} *Nestle v. City of Santa Monica*, 6 Cal.3d 920 [101 Cal.Rptr. 568, 496 P.2d 480].
- ^{xxiii} *Nestle v. City of Santa Monica* 6 Cal.3d 920 [101 Cal.Rptr. 568, 496 P.2d 480]. (*Id.*, at page:. 931-937.)
- ^{xxiv} *Van Alstyne, Just Compensation of Intangible Detriment: Criteria for Legislative Modifications in California* (1969) 16 U.C.L.A. L.Rev. 491, 525, fn. 130; *Fadem & Berger, A Noisy Airport Is a Damned Nuisance!* (1971) 3 Sw. Univ. L. Rev. 39, 48, fn. 35; *Stoebuck, Condemnation by Nuisance: The Airport Cases in Retrospect and Prospect* (1967) 71 Dick. L.Rev. 207, 209; *Thornburg v. Port of Portland*, *supra*, 376 P.2d at page:. 105-107.
- ^{xxv} *United States v. Causby*, 328 U.S. 256.
- ^{xxvi} *United States v. Causby*, 328 U.S., at p. 262.
- ^{xxvii} *United States v. Causby*, 328 U.S. at p.266.
- ^{xxviii} *Thornburg v. Port of Portland* (1962) 233 Ore. 178 [376 P.2d 100], *Second Appeal* (1966) 244 Ore. 69 [415 P.2d 750].
- ^{xxix} *Thornburg v. Port of Portland*, *supra*, 376 P.2d at p. 106.
- ^{xxx} *Thornburg v. Port of Portland*, *supra*, 415 P.2d at p. 752.
- ^{xxxi} *Martin v. Port of Seattle* (1964) 64 Wn.2d 309 [391 P.2d 540], *cert. den.*, 379 U.S. 989 [13 L.Ed.2d 610, 85 S.Ct. 701].
- ^{xxxii} *Ackerman v. Port of Seattle* (1960) 55 Wn.2d 400 [348 P.2d 664, 77 A.L.R.2d 1344] (quoted by the United States Supreme Court in *Griggs v. Allegheny County*, *supra*).
- ^{xxxiii} 369 US 84 (1962)
- ^{xxxiv} 369 US 84 (1962)
- ^{xxxv} 26 Cal. 3d 86,603 P.2d 1329,160 Cal.Rptr.733,*cert. denied*,101
- ^{xxxvi} "Inverse condemnation is a term used in the law to describe a situation in which the government takes private property but fails to pay the compensation required by the 5th Amendment of Constitution. In order to be compensated, the owner must then sue the government. In such cases the owner is the plaintiff and that is why the action is called inverse – the order of parties is reversed, as compared to the usual procedure in direct condemnation where the government is the plaintiff who sues a defendant-owner to take his or her property..... Inverse condemnation is a lawsuit brought by a property owner seeking compensation for land taken for a public use by a government entity with eminent domain powers. Eminent domain is the taking of private land for public use with payment of compensation by a government entity. Inverse condemnation actions are usually brought when the government has limited use of private land to

an extent that the value of that land is greatly reduced, or where the government has allowed the public to make use of private land.....Inverse condemnation may be a direct, physical taking of or interference with real or personal property by a public entity. For example, inverse condemnation liability has been found due to flooding, escaping sewage, interference with land stability, impairment of access, or noise from overflying aircraft.....A claim of inverse condemnation may also arise from a “regulatory taking.” In such cases, a government regulation is claimed to amount to a taking or damaging of property, such as overly restrictive zoning regulations, denial of building or demolition permits, and burdensome conditions placed on development.” Source: <http://definitions.uslegal.com/i/inverse-condemnation/>

^{xxxvii} *Dennis v Ministry of Defence* [2003] 1 EWHC 793, Neutral Citation No. [2003] EWHC 793 (QB) Case No: 02/TLQ/0970

^{xxxviii} *Dennis v Ministry of Defence* [2003] 1 EWHC 793, Neutral Citation No. [2003] EWHC 793 (QB) Case No: 02/TLQ/0970

^{xxxix} *Bliss v Half* (1838) 4 Bing NC 153; *Miller v Jackson* (1977] QB 96

^{xl} A wrongdoer; an individual who commits a wrongful act that injures another and for which the law provides a legal right to seek relief; a defendant in a civil tort action. Source: <http://legal-dictionary.thefreedictionary.com/Tortfeasor>

^{xli} (at para 34)

^{xlii} (at para 46)

^{xliii} (at para 46)

^{xliv} *Allen v Gulf Oil Refining Ltd* [1981] AC 1001.

^{xlv} *Marcic v, Thames Water Utilities Ltd* [2002] EWCA Civ 64) 64.

^{xlvi} *Dennis v Ministry of Defence* [2003] 1 EWHC 793, Neutral Citation No. [2003] EWHC 793 (QB) Case No: 02/TLQ/0970.

^{xlvii} (1894)1 Ch 287

^{xlviii} *Elliott v Islington LBC* (1991) TLR 517

^{xlix} *Powell and Raynor v UK* (1990) 12 EHRR 355 at 368 (recently re-examined by the Court of Appeal in *Mnrcic v Thames Water Utilities Ltd*, above, at paras 105-112 per Lord Phillips MR)

¹ European Court of Human Rights (ECtHR)

^{li} (at para 41)

^{lii} *S v France* [1990] 65 D & R 250 at para 117

^{liii} *Hatton v UK* [2002] 34 EHRR 1

^{liv} European Convention on Human Rights (ECHR)

^{lv} *Stephen and Suzanne Roper v Tussauds Theme Parks Ltd* [2007] EWHC 624 (Admin)

^{lvi} Pass Notes, No 2,534 Alton Towers, Wednesday November 3, 2004, *The Guardian*

^{lvii} Mike Taylor, Alton Towers noise appeal fails, Article date: 24.03.2007, *Independent*, <http://www.richardbuxton.co.uk/v3.0/?q=node/319>

^{lviii} *Stephen and Suzanne Roper v Tussauds Theme Parks Ltd* [2007] EWHC 624 (Admin) Case No: CO/2213/2006, in *The High Court of Justice Queen's Bench Division Administrative Court Royal Courts of Justice Strand, London, WC2A 2LL*, 23 March 2007.

^{lix} *India v KRR Majestic Colony Welfare Association* (2000) 7 SCC 282.

^{lx} *India v KRR Majestic Colony Welfare Association* (2000) 7 SCC 282.

^{lxi} A.I.R. 1987 Mad 28

^{lxii} Burrows, Paul (1980), 'Nuisance, Legal Rules and Decentralised Decisions: a Different View from the Cathedral Crypt', in Borrows, P. and Veljanovski, C.G. (eds), *The Economics Approach to Law*, London, Butterworths, page: 157.