

The role of public nuisance in group actions for environmental pollution

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Introduction

- Group actions for private nuisance well established
- Group actions for public nuisance rare
- General scarcity of modern day public nuisance claims (even individual claims)
- The legal authorities tend to be elderly
- Three modern authorities are
 - Corby Group Litigation v Corby BC
 - the Buncefield litigation
 - Jan de Nul v NV Royale Belge

Historical development of nuisance

- Several centuries old
- Began as a crime
- No civil action until approx 16th century and the introduction of the requirement for “special damage” (a greater hurt or displeasure than the general public).
- Introduction of special damage criticised by commentators

The definition of public nuisance

“A person is guilty of an offence of public nuisance who does an act not warranted by law, or omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property, morals, or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty’s subjects.”

Archbold, Criminal Pleading, Evidence and Practice

Or as others have put it

- “a public nuisance is simply an unlawful act or omission which endangers the life, safety, health, property or comfort of the public” Dyson LJ (as he was then) Corby Group Litigation
- “a rag bag of odds and ends which we should nowadays call public welfare offences” (JR Spencer Public Nuisance – A critical examination (1989) CLJ)

The potential advantages of public nuisance

- Two potential advantages over private nuisance
 - Not tied to ownership of land so children/lodgers can sue and get damages
 - broad definition which envisages a wide range of activities giving rise to a broad range of impacts
- Real life example – children and hydrogen sulphide fumes from sewer in Yorkshire

The disadvantages

- *“Few points in civil law are more obscure than the meaning of special damage in the context of public nuisance”*
- *Everything in public nuisance runs contrary to modern notions of certainty and precision” JR Spencer (1989).*

Special damage

- Does the requirement for ‘special damage’ allow recovery for a group action for loss of amenity caused by smells, noise, etc – the most common impact in environmental pollution claims?
- Caselaw allows recovery for pecuniary loss and personal injury

loss of amenity recoverable as special damage?

- Uncertain
- As Lord Reid said in the Wagon Mound, a case about an oil spill from a vessel onto water:
“the authorities on this matter are numerous and exceedingly difficult to reconcile” (Overseas Tankship (UK) Ltd v the Miller Steamship Co [1967] 1 AC 617 at 635)

Bodo Community v Shell

- Claim by 15,000 Nigerians against Shell for oil spill in the local creek (heart of the Community)
- Includes claim by 2000 children and teachers in the boarding school for public nuisance for loss of amenity
- Preliminary issues April 2014 - could they claim for loss of amenity? Nigerian law but follows the common law so lots of english case law put forward in Court

Bodo

- Akenhead J held (obiter) no stand-alone entitlement to damages for inconvenience etc unless it is quantifiable; thus, damages for distress, shock or fear, falling short of personal injury are not recoverable.

However contrast Moore Bick J in Jan de Nul

- *...the principle that general damages may be awarded where an injury has been suffered which cannot be precisely measured in monetary terms is of general application...Public nuisance raises different considerations only in the fact that the claimant must be able to show that he has suffered damage over and above that suffered by the public generally. However, once he can show that he has suffered some direct and substantial injury over and above that suffered by the public at large I can see no reason in principle why the court should not be able to award general damages in respect of it*

Conclusion

- Public nuisance has advantages over private nuisance in group actions
- But obstacles remain – is loss of amenity recoverable?
- conflicting indications from judiciary
- Bodo Claim ought to be a paradigm of recovery for loss of amenity
- Academic community needs to help!