

# Trespass to land and nuisance annotated problem question

Lekan owns a large country estate in Buckhampton. He wants to develop it as an environmentally friendly residential adventure centre catering for stressed-out city executives. To this end, he has constructed a network of ropes, ladders and bridges in the canopy of his woodland for them to come and 'Swing High' from tree to tree. Unfortunately, misplaced marketing has led to the majority of his customers being large, noisy groups of young people on stag and hen weekends. Lekan also provides facilities for paintballing and a quad-bike cross-country course. In line with his stated environmental policy, he has recently begun to use large volumes of seaweed, collected from nearby beaches, as fertiliser for his large organic vegetable patch. He has been encouraged to do so by his local council's recycling officer, who is keen to stop waste material going to landfill sites.

Lekan, the 'creator' of the alleged nuisances, will be the defendant.

The first question, following *Hunter, [1997]* would be to ask whether Sarah has 'standing' to sue.

Lekan receives the following complaints:

- Sarah, who lives downwind of Lekan's estate, complains that the smell of the rotting seaweed makes her physically sick.
- Sandy, a 14-year-old, lives on a neighbouring farm. He complains that the noise from the quad bikes is causing his guinea pigs to miscarry their young.
- Jess who, when she walks her dogs, parks her car next to Lekan's boundary fence, complains that her car has, on a few occasions, been hit by stray paintballs.
- Ailsa complains that the 'Swing High' centre 'lowers the tone of the neighbourhood' and that her back garden can be seen from the platforms in the trees.

Sarah is complaining that the smell of the seaweed is a nuisance. What remedy would she require? Might the 'nature of the locality' affect her claim?

Physical sickness cannot be claimed in private nuisance—although it might be part of 'lost amenity'. Is there a potential claim in public nuisance? What would she have to show? Does she have a human rights-based claim?

Will Jess be able to claim? Does she have standing to sue in nuisance? If there is physical damage to her car, the locality rule would not need to be applied (*St Helen's Smelting [1865]*).

Would a child of this age have 'standing'? What issues does this raise?

Can this be construed in any way as a harm to the land affected? Is Sandy 'abnormally sensitive' in his use of land? Or would the harm be 'foreseeable' (*Network Rail [2004]*).

Is this a nuisance claim? Possibly public nuisance if this affects a class of Her Majesty's subjects. On the visibility of her back garden, see *Fearn and others v The Board of Trustees of the Tate Gallery [2019]*.

The alleged nuisance. What might be the remedy sought for this? Consider whether the 'nature of the locality' might affect either the success of the claim or, if successful, the remedy (see *Coventry v Lawrence [2014]*).

What kind of claim is this? Is it one based on human rights? Or is it trespass?

Is this trespass? If so, the standing issue may not be a problem—but her car is not 'land', nor is she on her own land.