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September 2010



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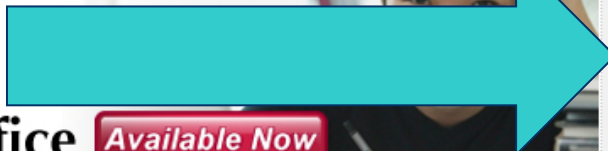
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- Name of Pub.
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Case Citation Format

U.S. Oil & Ref. Co. v. Dep't of Ecology, 96 Wash.2d 85, 91, 633 P.2d 1329 (1981).

Case Citation Format

Party 1 v. Party 2 Reporter Name
Volume Number Page Number

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Particular Page
633 P.2d 1329 **Parallel Citation**

(1981). **Year of Decision**

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NOTES AND QUESTIONS

1. In the *Siegler v. Kulman* case to which the opinion refers, the Supreme Court of Washington found that strict liability applied to the transportation of gasoline as freight in a tanker truck. The case arose out of an accident in which a high school student on her way home from her after school job came upon a gasoline spill that had just occurred on the highway when the tank trailer separated from the truck and overturned. The gasoline spill burst into flames as she reached it.

Langan v. Valicopters, Inc.,
88 Wash. 2d 855, 567 P.2d 218
(1977)

P.2d 175 (1977) (no strict liability because filling stations are common in residential areas); *Langan v. Valicopters, Inc.*, 88 Wash.2d 855, 567 P.2d 218 (1977) (strict liability for crop dusting) and *Lawler v. Skelton*, 241 Miss. 274, 130 So.2d 565, (1961) (negligence for crop dusting); *Klein v. Pyrodyne Corp.*, 117 Wash.2d 1, 810 P.2d 917 (1991) (strict liability for fireworks display at 4th of July celebration) and *Cadena v. Chicago Fireworks Mfg. Co.*, 297 Ill.App.3d 945, 697 N.E.2d 802 (1998) (using same §§ 519–520 analysis, court reaches opposite result).

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9. Many of the contemporary developments in tort law have been accomplished on an "absolute liability" basis. See, e.g., *Restatement (Second) of Torts* § 402A, 20 Tex.L.J. 1172 (1952).

61 Yale L.J. 1172

10. Rylands v. Fletcher has been a favorite topic for an entire century. See Bohlen, *The Rule in Rylands v. Fletcher*, 59 U.L.Rev. 298 (1911); Thayer, *Liability Without Fault*, 29 Harv.L.Rev. 801 (1916); Morris, *Hazardous Enterprises and Risk-Bearing Capacity*, 61 Yale L.J. 1172 (1952); Stallybrass, *Dangerous Things and the New Natural Uses of Land*, 2 Cambridge L.J. 276 (1990); Prosser, *Strict Liability in Torts*, 39 Cal.L.Rev. 369 (1951).

110 Yale L.J. 333

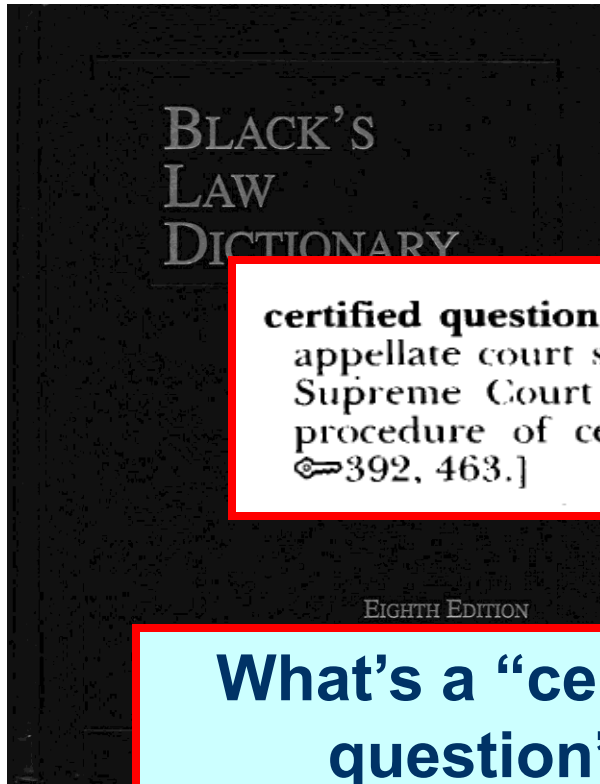
Torts 135 (1953); Lemmon, *The Developing Doctrine of Strict Liability in Torts: Hazardous Waste Remediation Contractors Beware*, 42 Loy. L.Rev. 1001 (1996); Claus, *Oregon's Development of Absolute Liability under the Rylands Doctrine: a Case Study*, 53 Wash. U. J. Urb. & Contemp. L. 171 (1998); Shugerman, *The Floodgates of Strict Liability: Bursting Reservoirs and the Adoption of Fletcher v. Rylands in the Golden Age*, 110 Yale L.J. 333 (2000).

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Black's Law Dictionary



certified question. A point of law on which a federal appellate court seeks guidance from either the U.S. Supreme Court or the highest state court by the procedure of certification. [Cases: Federal Courts ¶392, 463.]

What's a "certified question"?

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certificate of registration. 1. *Copyright.* A U.S. Copyright Office document approving a copyright application and stating the approved work's registration date and copyright registration number. [Cases: Copyrights and Intellectual Property ¶50-25; C.J.S. Copyrights and Intellectual Property §§ 39, 96.] 2. *Trademarks.* A document affirming that the U.S. Patent and Trademark Office has allowed and recorded a trademark or servicemark. • The certificate identifies (1) the registered mark, (2) the date of first use, (3) the type of product or service that the mark applies to, (4) the registration number and date, (5) the registration's term, (6) the original application date, and (7) any conditions or limitations on registration. [Cases: Trade Regulation ¶251; C.J.S. Trademarks, Trade-Names, and Unfair Competition §§ 149, 199-201.]

certificate of registry. *Maritime law.* A document certifying that a vessel is registered in the United States.

certiorari

en state court to review a question of law arising in a case pending before the appellate court and on which it needs guidance. • Certification is commonly used with state courts, but the U.S. Supreme Court has steadily restricted the number of cases it reviews by certification. See 28 USC § 1254(2). Cf. CERTIORARI. [Cases: Federal Courts ¶392, 463.]

certification authority. An organization that issues digital certificates and maintains a database of certificates available on the Internet. • Many states have licensing laws for certification authorities. — *Abbr.* CA. — Also termed *certifying authority*.

certification hearing. See *transfer hearing* under HEARING.

certification mark. See *certification trademark* under TRADEMARK.

certification of bargaining agent. See UNION CERTIFICATION.

service is not included with the initial pleading that the plaintiff files to begin a suit, because that pleading is usually filed before it is served (although the plaintiff may be required to file proof of service). Other pleadings and motions are not required to have a certificate of service. Fed. R. Civ. P. 5(d). — Also termed *proof of service*. [Cases: Federal Civil Procedure ¶369; Pleading ¶336; Process ¶132; C.J.S. Pleading §§ 277, 373-388; Process §§ 70-80.]

certificate of stock. See STOCK CERTIFICATE.

ment indicating ownership of shares of stock. • It certifies any facts of other property ¶99. C.J.S. Property ¶99.

of attesting. 2. The state of an attested statement. 4. of a check by which it is in which a federal appellate court or the high-

certified question. A point of law on which a federal appellate court seeks guidance from either the U.S. Supreme Court or the highest state court by the procedure of certification. [Cases: Federal Courts ¶392, 463.]

certify, *v.* 1. To authenticate or verify in writing. 2. To attest as being true or as meeting certain criteria. 3. (Of a court) to issue an order allowing a class of litigants to maintain a class action; to create (a class) for purposes of a class action. Cf. INCERTIFY. See CERTIFICATION. — *certified, adj.*

certifying authority. See CERTIFICATION AUTHORITY.

certiorari (*ser-sher-er-ah-ri* or *ser-see-er-ah-ri-er*). [Law Latin "to be more fully informed."] An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. • The writ evolved from one of the prerogative writs of the English Court of King's Bench, and in the United States it became a general appellate remedy. The U.S. Supreme Court uses

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THE LAW OF TORTS

Don R. Dobbs

§ 463 DEFINING & ILLUSTRATING PRIVATE NUISANCE 1321

the common right and are said to be "public nuisances," as where a public stream is polluted, a condition that may lead to a private right of action in certain instances.¹⁷ These diverse examples suggest that nuisance could not be clearly defined.

Clearing a path. Two increasingly clear perceptions assisted understanding of nuisance law. First, if public and statutory nuisance cases are set aside for separate analysis, some paths can be marked in the remaining private nuisance tort. Second, private nuisance does not describe any particular conduct of the defendant, but a type of harm suffered by the plaintiff—impaired enjoyment of rights in land.¹⁸ These perceptions make possible a reasonably coherent understanding of private nuisance, so some of the main features of Prosser's jungle can be

§ 463. Defining and Illustrating Private Nuisance

Definitions of private nuisance. A private nuisance today is a condition¹ or activity² that interferes with the possessor's³ use and enjoyment of her land by incorporeal or non-trespassory invasions⁴ to such an extent that the landowner cannot reasonably be expected to bear without compensation.⁵ What the plaintiff can reasonably be expected to bear it often determined by the character of the neighborhood, but the utility of the defendant's activity is also relevant.⁶ The interference may cause tangible harm to the land, diminution in its market value, or personal discomfort to its occupants. The interference must be one that would

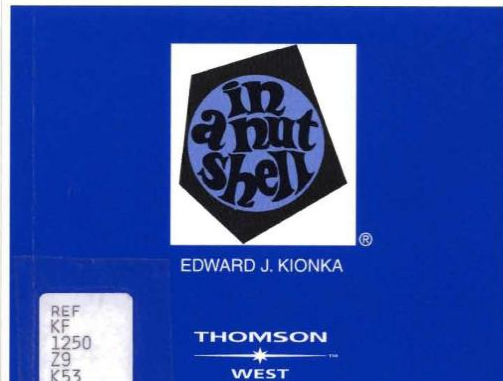
17. See § 467.

18. See *Graber v. City of Peoria*, 156 Ariz. 553, 753 P.2d 1209 (Ct. App. 1988).

defined as anything done to the hurt, annoyance, or detriment of the lands or hereditaments of another, and not amounting to a trespass. Such broad definitions are un-

Nutshells

Torts



Environmental Law. Recent years have witnessed a dramatic awakening of interest in protection of the environment against certain abuses, principally resource depletion and pollution. Pollution frequently causes physical harm, and thus those harmed have looked to tort law—especially the law of nuisance—in their search for legal remedies to combat it.

Contributory negligence, assumption of risk, and the doctrine of avoidable consequences are defenses to the same extent as in other tort actions.

Defendants in nuisance cases have often alleged that plaintiff assumed the risk because he "came to the nuisance" by purchasing and moving to land next to an existing and operating source of interference. The cases generally have not supported this defense, at least where plaintiff purchased the land in good faith and not for purposes of litigation. Absent a prescriptive right, which requires actual harm to the property for a certain period of time, defendant cannot require surrounding land to endure his nuisance—at least not without compensation. A purchaser is entitled to the reasonable use and enjoyment of his property the same as any one

of the environment against certain abuses, principally resource depletion and pollution. Pollution frequently causes physical harm, and thus those harmed have looked to tort law—especially the law of nuisance—in their search for legal remedies to combat it.

The nuisance provisions of the Restatement (Second) of Torts were drafted with a view toward expanding this remedy. In the area of private nuisance, the Restatement incorporates the concept that the plaintiff may be entitled to compensation (but not to an injunction) for substantial harm intentionally caused, even though on balance the utility of defendant's conduct outweighs the harm to plaintiff, and therefore ordinarily would be considered reasonable and hence not a nuisance. In other words, even socially very useful activities should have to pay (i.e., internalize) the cost of substantial harm they cause their neighbors, and should not have a privilege or license to deposit their wastes (make noise, etc.) upon them without charge. Section 826 provides that an intentional

Briefly, how do torts relate to environmental law?

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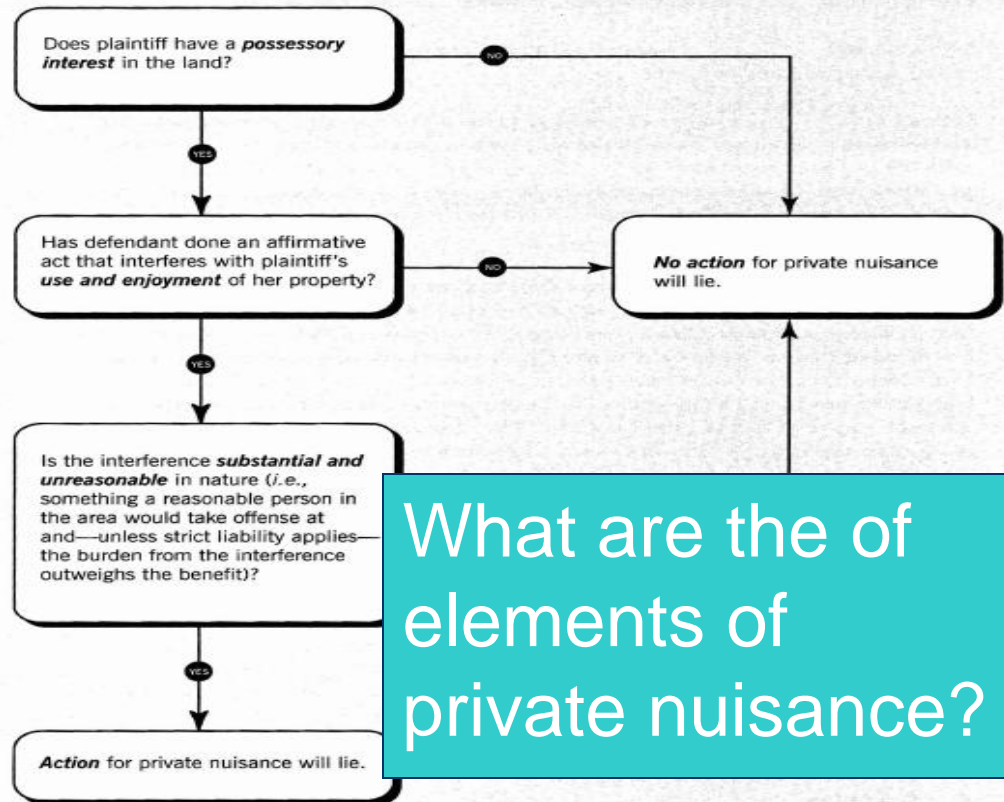
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What are the of
elements of
private nuisance?

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