TORT ESSAY – NUISANCE AND NEGLIGENCE

A number of aspects of liability rise from this case study and each one will be discussed. With regards to the headaches suffered by Karl, it is necessary to look at private nuisance. Negligence is disregarded as it is assumed from the details in the case study that the headaches suffered are not so serious as to cause personal injury, it is just described as 'mere discomfort'. Such a claim under the law of nuisance requires three factors to be fulfilled. The first being a continuous interference. This is shown in *De Keyser's Royal Hotel v Spicer Bros Ltd (1914) 30 TLR 257.* From the case study one can assume that it is a continuing interfering act and not a one off.

Secondly, the interference must be unlawful or unreasonable. This is up to the claimant to prove. The rule for this is *sic utere tuo ut alienum non laedas* (So use your own property as not to injure your neighbour's). The locality in this instance reflects the unreasonableness of Jane's actions. It occurred in a residential area and therefore such Gases were not to be expected. The duration of the act will also be taken into account. Because Jane is a young inventor it is assumed her work is an ongoing process and not a one off as explained above. The seriousness is also considered. In Walter v Selfe (1851), Knight-Bruce V C said "an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to elegant or dainty modes and habits of living, but according too the plain sober and simple notions among the English people." This shows Jane's actions would be deemed unreasonable, heightened by the fact that the incident occurred in a housing area, not an industrial estate. The sensitivity of the defendant, the utility of his conduct and a malicious aspect may be also discussed but this is not relevant in this case. Thus the second aspect of unlawful or

unreasonable interference is established.

The third and final aspect to fulfill is indirect interference with the claimants use or enjoyment of his land. The claimant must usually prove damage, i.e. physical damage to the land itself or property; or injury to health, such as headaches caused by noise, which prevents a person enjoying the use of their land. Case examples include *Bliss v Hall (1838) 4 Bing NC 183* - smells and fumes from candle making invading adjoining land. The case study states Karl did suffer from headaches and thus satisfies the final point. In court, the headaches could be verified by a professional to add weight to the argument as it states in the case study that Jane's invention causes headaches in humans and is fatal to plants. With the three key ingredients of the tort fulfilled it is established Jane is liable under private nuisance. From the facts in the case study I can see no defence available to Jane. The only possibility is if of prescription. This is a defence unique to nuisance. If Jane has been continuing with the act for 20 years or more the right to complain lapses as in *Sturges v. Bridgman (1879) 11 Ch D 852.* However, much more detail would be needed to establish this. The fact Jane claims her invention may save the western world is not a defence to private nuisance but may be argued in her defence.

Because Jane is only a tenant, Ingrid the landlord may also be liable. A landlord may be liable for nuisances emanating from land, e.g. if the landlord had knowledge of the nuisance before letting, or where the landlord reserved the right to enter and repair the premises. For example, *Tetley v Chitty [1986] 1 All ER 663* - council granted permission for a go-kart track on council owned land. Council liable in nuisance for noise. The fact that the partition wall had cracks in that allowed the fumes to come through may also render Ingrid liable. It says they were like that even before she acquired the property

however it does not state if she had knowledge of them. If she did she may be liable under negligent failure to repair however more facts are needed for this.

Obviously, Karl's breaking and entering into Jane's flat and theft of the petrol substitute is unlawful however this is an area of criminal law and not tortious liability, therefore the next area to be discussed is Lucy and Karl's liability for the destroyed vegetation in the gardens adjoining Lucy.

Lucy may be liable as although she did not put the petrol substitute on her land, by her saying she is too poor and old to dispose of it infers she knows it is there. This may render her liable as the fact she is poor and old does not dissolve her of liability. She could have taken reasonable steps to ensure the removal of the item. As was stated in the case of *Goldman v Hargrave [1966] 2 All ER 989, PC (Australia)* D was liable for the damage to P's property, because although he did not cause the initial fire he was negligent in not putting it out as a reasonable prudent person would have done. However it may be possible for Lucy to sue and recover damages from Karl under the tort of trespass.

When considering liability of Max for the damage to Oliver's car it is essential to look at the case of *Cunliffe v Banks [1945] 1 All ER 459*,

A diseased tree belong to D fell across the highway; a motorcyclist P collided with the tree and was killed. The judge found as a fact that D's agent had checked the state of the trees quite regularly, and could not have realised that it was likely to fall. A person is liable for a nuisance, he said, if he causes it, or if by the neglect of some duty he allowed it to arise, or if when it has arisen without his own act or default he omits to remedy it within a reasonable time after he should have been aware of it. But in the instant case D was not liable either in negligence or in nuisance. These facts are quite similar to the

facts in the case study, however, it is unclear whether Max knew that the vapors had penetrated the bark of the tree or if he regularly checked the tree for damage. If he did this would greatly strengthen Oliver's position as Max may be liable under negligence. Also, the fact that a 2 month period passes between the vapors penetrating the branch and it falling onto the highway may be important. This brings in the test of reasonableness from *Caparo Industries v Dickman [1990] 1 All ER 568, HL* and asks the question if it was reasonable for Max to check his tree as his duty of care to the users of the highway of which the branch overhung.

An occupier's control of land may give rise to an affirmative duty in relation to the behavior of visitors or even acts of nature. Where the defendant has control over some object which is likely to be particularly dangerous if interfered with by a third party he may be under a duty to prevent such an interference (*Dominion Natural Gas v Collins and Perkins [1909] AC 640*). This has been applied to the theft of a poisonous chemical by young children (*Holian v United Grain Growers (1980) 112 DLR (3d) 611*).

In conclusion, on the facts presented it is unclear if Oliver could be successful with a claim over Max for the damage of his car. More detail would be required however on the assumption no extra checks were carried out and the finding in *Holian v United Grain Growers*I think a claim for damages will succeed.