Difficulties have arisen over the requirement of the intention to exclude others as a necessary ingredient of possession, in regard to things found under or on land.

It has been held that where goods are not attached to land it is necessary to distinguish between a finding in a place over which the occupier has shown a clear intent to control exclusively, and finding in a place to which the finder has access as a matter of course. In the latter case, the finder's possessory title takes precedence over that of the occupier.

However, an occupier of land or a building has superior rights to those of a finder in regard to goods in or attached to the land or building.

The special rules relating to treasure are considered in Chapter 3.

The Tubantia, 1924 – Possession and control (**364**)

Parker v *British Airways Board*, 1982 – Finders of property (**365**)

South Staffordshire Water Co v *Sharman*, 1896 – Goods which are on or attached to land (**366**)

Although the claimant relies on possession and not on ownership or title, the defendant can set up the *jus tertii* (right of a third party) under s 8(1) of the Torts (Interference with Goods) Act 1977. Under that section the defendant is entitled to show in accordance with rules of court that a third party has a better right than the claimant as regards all or any part of the interest sought by the claimant and any rule of law (sometimes and formerly called *jus tertii*) to the contrary is abolished. Under s 8(2) rules of court relating to proceedings for wrongful interference require the claimant to give particulars of his title; to identify any person who to his knowledge has or claims any interest in the goods; to authorise the defendant to apply for directions as to whether any person should be joined in the action with a view to establishing whether he has a better right than the claimant, or has a claim as a result of which the defendant might be doubly liable. If a party refuses to be joined the court may deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms or conditions as the court may specify.

The conduct of the defendant which the claimant must prove

In wrongful interference by trespass there must be a *direct* interference with the goods, and this may consist of moving a chattel or the throwing of something at it. A person who writes with his finger in the dust on the back of a car commits wrongful interference, as does a person who beats another's animals or administers poison to them.

In this connection, there have been problems where owners of land have introduced wheel-clamping to prevent the parking of vehicles on their land. The technique is also applied by public authorities to enforce parking restrictions. The legal position was stated definitively by the Court of Appeal in *Vine* v *Waltham Forest LBC* (2000) *The Times*, 12 April where it was ruled:

- that the act of wheel-clamping a car even when the car is on somebody else's land without authorisation is a trespass to goods unless it can be shown that the owner had consented to or willingly assumed the risk of his car being clamped;
- in order to show this, it has to be proved that the owner of the vehicle or its driver (on his behalf) was aware of the consequences of parking the car so that it trespassed on the land of another;
- this can be done by showing that the owner (or driver on his behalf) saw and understood the significance of a warning notice;
- if the notice is seen but not understood, there is nevertheless consent to clamping;

- however, in *Vine*, where the notice was not seen, the clamping was a trespass and the clamper was liable in damages.

It is important to remember that in the *Vine* case the parking was on private land where implied consent following placing of a conspicuous notice is required. However this does not apply to all parking. In London, for example, there is local statute law in the shape of the Road Traffic Act 1991 together with subsidiary regulations made under it. Part II and regulations deal with parking in London. Wheel-clamping is permitted by s 69 of the 1991 Act in the case of a stationary vehicle illegally parked or in a parking place designated for another or other purposes. *Notice is not a requirement*. This gives a clamper the defence of statutory authority. The distinction in *Vine* is that Ms Vine parked her car in a parking bay on private land where the local authority's contractors clamped it. Here implied consent by notice was required. For those who are concerned about the 'cowboy' approach of some clampers reference should be made to the Private Security Industry Act 2001 which imposes and will raise professional standards in the clamping business.

The principle of liability

In wrongful interference by trespass to goods the liability would not now appear to be strict. The defence of inevitable accident would presumably be available to a defendant (*National Coal Board* v *Evans* (1951), see Chapter 20) and it is possible that, since *Letang* v *Cooper* (1964) (see Case **351**), the interference with the possession of goods must be intentional. Mere negligence may not suffice. This would follow a similar development in the tort of trespass to the person which began with the decision in *Fowler* v *Lanning* (1959) (see Case **351**).

Wrongful interference by conversion

The relationship between the claimant and the goods

It is often said that the right to sue for wrongful interference by conversion depends on ownership, but this is not really true. To be able to sue for wrongful interference the claimant must have had either possession or the immediate right to possess at the time the wrong was committed. Mere ownership without one of the above rights is not enough. Nor is the mere right to possess unless it is coupled with ownership.

As in wrongful interference by trespass to goods so in wrongful interference by conversion, the defendant can set up the right of a third party and s 8(1) and (2) of the 1977 Act apply.

The conduct of the defendant which the claimant must prove

In wrongful interference by conversion the defendant must do something which is a complete denial of, or is inconsistent with, the claimant's title to the goods; a mere interference with possession is not enough. Furthermore, wrongful interference by conversion need not be a trespass.

Generally the conduct of the defendant must be an act rather than a failure to act. Thus, although the claimant may base his case on a demand for the goods followed by a refusal, he must still show a denial of title in the defendant. If, therefore, the defendant can show that he was retaining the goods in the exercise of a lien for, say, repair charges unpaid, the claimant will fail in his action. A defendant may also refuse temporarily to give up the goods while he takes steps to check the title of the claimant.

The principle of liability

In general, liability in wrongful interference by conversion is strict and it is not necessary for the claimant to prove that the defendant had a wrong intention, though sometimes it may

be a defence for the defendant to say that he acted honestly. Where the defendant had lost the goods by *negligence* there was no wrongful interference by conversion but the claimant may now sue under the provisions of the Torts (Interference with Goods) Act 1977 for damage to goods caused by negligence.

Jarvis v *Williams*, 1955 – Conversion: there must be a right of property (**367**)
Fouldes v *Willoughby*, 1841 – Mere interference with possession (**368**)
Oakley v *Lyster*, 1931 – No need for trespass (**369**)
Elvin and Powell Ltd v *Plummer Roddis Ltd*, 1933 – An honest defendant (**370**)

Detention of goods

Section 2(1) of the Torts (Interference with Goods) Act 1977 abolishes the old tort of detinue which was a tort relating to detention of goods. The Act substitutes statutory provisions. Under s 2(2) the tort of wrongful interference by conversion is substituted for the old action of detinue. Thus mere detention can now amount to conversion. In other words, detinue and conversion are merged.

As regards the form of judgment where goods are detained, s 3 provides that in proceedings for wrongful interference against a person who is in possession or in control of the goods relief may be given if appropriate in accordance with s 3(2). Under s 3(2) the relief is:

(*a*) an order for delivery of the goods, and for payment of any consequential damages; or
(*b*) an order for delivery of the goods, giving the defendant the alternative of paying damages by reference to the value of the goods, together in either alternative with payment of any consequential damages; or
(*c*) damages.

Section 3(2) provides that subject to rules of court relief should be given under only one of paragraphs (*a*), (*b*) and (*c*) above and relief under paragraph (*a*) is at the discretion of the court though the claimant may choose between the others. If it is shown to the satisfaction of the court that an order under (*a*) above has not been complied with, the court may revoke the order or the relevant part of it and make an order for payment of damages by reference to the value of the goods.

Where an order is made under (*b*) above the defendant may satisfy the order by returning the goods at any time before execution of judgment, but without prejudice to liability to pay any consequential damages.

Remedies

Reference has already been made to the form of judgment where goods are detained. So far as wrongful interference by trespass and by conversion are concerned, the remedy is damages. The value of the goods is usually determined at the date of conversion. When a claimant has a claim for conversion he cannot delay the issue of his claim form and the duty to mitigate loss operates. If the goods decrease in value between the date of the conversion and the time the court gives judgment, the claimant will normally still recover the value at the date of conversion (*Rhodes* v *Moules* [1895] 1 Ch 236).

Section 5 of the 1977 Act makes it clear that a claimant's title to the goods is not extinguished by a judgment for damages but only when the judgment has been paid. The judgment as such does not affect title.

Under s 6 an allowance is available for an improvement in the goods. For example, where a person in good faith buys a stolen car and improves it he is entitled to an allowance for that improvement, and where a person in good faith buys the car from the improver and is sued in conversion by the true owner, the damages may be reduced to reflect the improvement. Section 7 deals with double liability, providing in particular that where as the result of enforcement of a double liability the claimant is unjustly enriched to any extent he shall be liable to reimburse the wrongdoer to that extent. For example, if a converter of goods pays damages first to a finder of the goods and then to the true owner, the finder is unjustly enriched unless he accounts over to the true owner, which he is required to do, and then the true owner is unjustly enriched and becomes liable to reimburse the converter of the goods.

Special damage for conversion may be awarded. Thus a carpenter whose tools are converted can recover his loss of wages (*Bodley* v *Reynolds* (1846) 8 QB 779). Furthermore, in *Hillesden Securities Ltd* v *Ryjack Ltd* [1983] 2 All ER 184 the defendant converted a Rolls-Royce car which he had hired from the claimant. It was held that he remained liable for the hiring charge until he returned it. This was £13,000, although the value of the Rolls-Royce at the date of conversion was only £7,500.

Finally, s 2(3) of the Limitation Act 1980 provides that once the six-year period of limitation has expired the claimant's title to the goods is extinguished. The Act also provides that if there are successive conversions over the same goods, whether by the same person or not, the cause of action is extinguished six years from the first conversion (Limitation Act 1980, s 3(1)).

Recaption

A person who is entitled to the possession of goods of which he has been wrongfully deprived may retake them after a demand for their return but must not use more than reasonable force. It is not clear whether he may enter upon the land of an innocent third party in order to recover the goods. It would seem lawful only after explanation and permission.

Replevin

Goods which have been taken by what is alleged to be unlawful distress, e.g. by a landlord for unpaid rent which is alleged by the tenant to have been paid, may be recovered by the owner giving security to the Registrar of the county court that he will immediately bring an action to determine the legality of the distress. The Registrar issues a warrant for the restitution of the goods.

Nuisance

The tort of nuisance is of two types – public and private.

Public nuisance

This is some unlawful act or omission endangering or interfering with the lives, comfort, property or common rights of the public, e.g. the obstruction of a highway or the keeping of dangerous premises near a highway. A public nuisance is a crime for which the remedy is

criminal proceedings. An example is provided by *R* v *Johnson (Anthony Thomas)* (1996) 160 JP 605 where the Court of Appeal held that obscene phone calls made on numerous occasions to 13 different women amounted to a public nuisance for which J was rightly sentenced to 240 hours of community service and ordered to pay £500 costs. It is actionable as a tort at the suit of a private individual if he has suffered peculiar damage over and above that suffered by the public as a whole.

Obstructions to the highway occur daily in our cities and towns, e.g. road repairs and scaffolding. However, these obstructions, being for reasonable purposes, are lawful unless they last for an excessive time. *Dangerous activities* carried on near to the highway may amount to a nuisance. With regard to *projections* on to the highway there is no liability for *things naturally on land*, e.g. trees, unless the person responsible for them knew, or ought to have known, that they were in a dangerous condition, as where a branch of a tree is rotten. However, liability appears to be strict in the case of *artificial projections*. However, where an action is brought for damages for personal injuries arising out of other forms of obstruction on the highway, it appears that fault is essential to liability. Thus, in this respect, the torts of nuisance and negligence are being drawn together.

Lack of actual knowledge of the nuisance is no defence. Thus in *R* v *Shorrock (Peter)* [1993] 3 All ER 917, S let a field on his farm to three people for the weekend and went away. S did not actually know that the field would be used for an 'acid house' party, which it was, and there were complaints from 275 people living up to four miles away. On prosecution for public nuisance S pleaded that he did not have actual knowledge of the event. It was held by the Court of Appeal that it was not necessary to prove actual knowledge of the nuisance; it was enough to show that S knew *or ought* to have known of it. The evidence seemed to establish that he at least knew there was some risk of creation of a nuisance and that constructive knowledge was enough. It is worth noting that judgments in the House of Lords in *Sedleigh-Denfield* v *O'Callaghan and Others* [1940] AC 880 suggest that constructive knowledge is also enough to found a claim in private nuisance.

Attorney-General* v *Gastonia Coaches, 1976 – Public nuisance: obstruction of highways and public footpaths (371)

Castle* v *St Augustine's Links Ltd, 1922 – A golf ball hits a car (372)

Tarry* v *Ashton, 1876 – An artificial projection (373)

Dymond* v *Pearce, 1972 – Other forms of highway obstruction (374)

Demise of public nuisance?

In the two following cases the House of Lords has almost passed a death sentence on the common law crime of public nuisance and has noted that the main areas which were once the province of public nuisance have to a large extent been taken over by statutory provisions, e.g. the Environment Protection Act 1990. Prosecutions said the House of Lords should be brought under the relevant statute because the statutory provisions were less vague than the common law concept of public nuisance and the penalties were known and the defences more clearly outlined.

The House of Lords looked again at the ingredients of the crime of public nuisance. Their Lordships affirmed that it requires an act or omission which the defendant knew or ought to have known would cause common injury to a section of the public at large. Thus a number of individual acts of private nuisance committed against several individuals was not an offence nor was an act or omission which had unintended or unforeseen consequences in causing a nuisance.

The above principles were applied in *R* v *Rimmington; R* v *Goldstein* [2006] 1 AC 459.

In *Rimmington* the defendant sent 538 postal packets containing racially offensive material to a number of individual members of the public based on their perceived ethnicity. The House of Lords ruled that these were acts of private nuisance and did not cause common injury to a substantial section of the public.

In *Goldstein* the defendant had owed his friend some money for a long time. When he finally sent his friend a cheque, he put some salt in the envelope as a joke, salt being used to preserve kosher food of which the defendant was a supplier. Unfortunately, the salt leaked out at a postal sorting office and went onto the hands of a postal worker who feared it might be anthrax. The building was evacuated causing disruption to the postal service.

The House of Lords ruled that the defendant could not possibly have intended or foreseen that the salt would leak out, since that would have ruined his joke. Both defendants were not guilty of public nuisance.

It is worth noting that the House of Lords did not rule out totally the existence of public nuisance and the relevant case law but clearly the courts will now require use of the many statutory provisions by prosecutors. (See further p 552.)

Private nuisance

This is an unlawful interference with people's use of their property or with their health, comfort or convenience, and such interference may vary according to the standard existing in the neighbourhood. It is a wrongful act causing material injury to property or sensible personal discomfort. In this connection injuries to *servitudes* may amount to private nuisance as where the defendant obstructs a right of way, or interferes with the claimant's water supply, access of air, light or support. It is worth noting that a local authority by granting planning permission for a development cannot prevent a claim for nuisance if that development causes one. Thus in *Wheeler* v *J J Saunders* [1995] 2 All ER 697 the Court of Appeal decided that the claimant was entitled to damages for nuisance caused by two pig units built on the defendant's land following the granting of planning permission for them by the local authority. Unlike Parliament, a local authority has no authority to authorise a nuisance.

In considering whether an act or omission is a nuisance, the following points are relevant:

(a) There need be no direct injury to health. It is enough that a person has been prevented to an appreciable extent from enjoying the ordinary comforts of life.

(b) The standard of comfort must be expected to vary with the district. There is no uniformity of standard between Park Lane and Poplar, although there may be common ground in some matters, e.g. light, since it requires the same amount of light to read in either place. However, where the alleged nuisance has caused *actual damage to property*, it is no defence to show that the district concerned is of any particular type.

In what may seem at first sight to be an unusual decision, the Court of Appeal ruled in *Murdoch* v *Glacier Metal Co Ltd* [1998] Env LR 732 that an action for nuisance by noise failed even though the noise was just above World Health Organisation levels for proper sleep. There was already a busy by-pass near to M's home and there were no other complaints from within the area. Thus, applying the standards of the district, M's claim failed.

(c) A person cannot take advantage of his peculiar sensitivity to noise and smells. There must be some give and take, and people cannot expect the same amenities in an industrial town as they might enjoy in the country.

(d) The utility of the alleged nuisance has no bearing on the question. Pigsties and breweries may be regarded by the community as very necessary, but if they infringe a person's right to the ordinary comforts of life, they are nuisances (see *Wheeler* above). Consent cannot be implied from the fact that the claimant came to the premises knowing that the nuisance was in existence. Nor is the fact that the nuisance arises out of the conferment of a public benefit a defence in the ordinary way.

Bliss v *Hall*, 1838 – Coming to the nuisance (**375**)
Adams v *Ursell*, 1913 – Public benefit (**376**)
Dunton v *Dover District Council*, 1977 – A noisy playground (**377**)

(e) The modes of annoyance are infinitely various. They may include such things as bell-ringing, circus performing, the excessive use of the radio, spreading tree roots, opening a sex shop in a residential area (*Laws* v *Florinplace* [1981] 1 All ER 659), low-flying aircraft and many others. It should also be noted that picketing a highway may be actionable as a nuisance and an injunction may be granted to prevent it. However, in *Hunter* v *Canary Wharf Ltd* [1997] 2 WLR 684 the House of Lords held that a nuisance action following the erection of a building on land could be brought in regard to interference by noise, dirt or smell but an action in regard to interference with a TV signal would fail.

Christie v *Davey*, 1893 – A versatile amateur musician (**378**)
Hubbard v *Pitt*, 1975 – Picketing the highway (**379**)

(f) A nuisance may result from the acts of several wrongdoers. Any one of them may be proceeded against, and he cannot plead in excuse that the nuisance was a joint effort, although he has a right of contribution against joint tortfeasors for the damages which might be assessed against him.

(g) Duration of the act. Although the acts complained of in nuisance are usually continuous, e.g. the constant emission of pungent smells from a factory, an act may constitute a nuisance even though it is temporary or instantaneous. The duration of the act complained of has a bearing upon the remedy which is appropriate and the court will not often grant an injunction in respect of a temporary nuisance because damages are an adequate remedy. Furthermore, a temporary nuisance may be too trivial to be actionable.

British Celanese Ltd v *A H Hunt (Capacitors) Ltd*, 1969 – A temporary nuisance (**380**)

(h) Sometimes malice or evil motive may become the gist of the offence. Malice or motive may be evidence that the defendant was not using his property in a lawful way.

Hollywood Silver Fox Farm v *Emmett*, 1936 – An evil motive (**381**)

(i) It is possible to acquire the right to create a private nuisance by prescription, that is, by 20 years' continuous operation since the act complained of first constituted a nuisance.

There is no corresponding right in respect of a public nuisance. Since a public nuisance is a crime, no length of time will make it legitimate.

Nuisance is primarily a wrong to property, but even where there is no physical damage the court can award compensation for annoyance and discomfort. A claim in private nuisance cannot be based solely upon personal injury, where an action would be in negligence. Claims for personal injuries can be made in public nuisance, though as we have seen in *Dymond* v *Pearce* (1972), *fault* in the defendant is generally required which makes the action in nuisance similar to that in negligence.

Bone* v *Seale, 1975 – No need for diminution in property values (**382**)

Furthermore, the tort of nuisance refers to the unreasonable use of property and is not a matter of reasonable care (compare negligence). Thus the defendant's use of his property may be offensive and constitute a nuisance no matter how careful he is.

Parties to sue or be sued

The occupant of the property affected by the nuisance is the person who should bring the action but a landlord may sue if the nuisance is effecting a permanent injury to his property, e.g. where the defendant is erecting a building which infringes the landlord's right to ancient lights.

Malone* v *Laskey, 1907 – Nuisance: occupier should sue (**383**)

Regarding liability, it is a general rule that the person who creates the nuisance is liable, and this will generally be the occupier. But a landlord may be liable, as a joint tortfeasor with his tenant: (*a*) if he created the nuisance and then leased the property; or (*b*) where the nuisance was due to the landlord's authorising the tenant expressly or impliedly to create or continue the nuisance; or (*c*) where the landlord knew or ought to have known of the nuisance before he let the premises.

Wilchick* v *Marks, 1934 – A landlord who had a right of entry (**384**)
Mint* v *Good, 1951 – A right of entry implied (**385**)
Harris* v *James, 1876 – A landlord authorised the nuisance (**386**)
Smith* v *Scott, 1972 – No authorisation by landlord (**387**)
Brew Bros* v *Snax (Ross), 1969 – A landlord allowed a nuisance to continue (**388**)

An occupier must abate a nuisance which was on the premises before he took them over, or is placed there afterwards, even by trespassers, provided that the occupier knows or ought to have known of the nuisance. An occupier is also liable for nuisance arising out of the operations of an independent contractor engaged in work on the premises where there is a special danger of nuisance arising from the nature of the works being carried out, e.g. extensive tunnelling operations (and see *Bower* v *Peate* (1876) in Chapter 20).

Sedleigh-Denfield* v *O'Callaghan, 1940 – An occupier must abate a known nuisance (**389**)

Remedies

The remedies for nuisance are three in number:

(a) The injured party may abate the nuisance, that is, remove it, provided that no unnecessary damage is caused, that no injury arises to an innocent third party, e.g. a tenant, and that, where entry on the defendant's land is necessary, a notice requesting the removal of the nuisance has first been given. The remedies of abatement and self-help are limited to situations where lives or property are in danger, said the Court of Appeal in *Co-operative Wholesale Society Ltd* v *British Railways Board* (1995) *The Times*, 20 December. BRB appealed against an award to CWS of £6,056 which was the cost of pulling down and rebuilding BRB's wall which had bulged on to CWS's property. BRB did not agree that the wall was dangerous but agreed with CWS that the latter could rebuild it at their own expense. CWS did so and then claimed to recover the cost from BRB. The Court of Appeal allowed BRB's appeal. The right of abatement and self-help was only available where lives or property were in danger which was not the case here. The first instance order was varied by substituting £1,400, i.e. the cost of demolition only.

(b) He may sue for damages.

(c) He may seek an injunction if (i) damages would be an insufficient remedy; and (ii) the nuisance is a continuing nuisance, e.g. smoke frequently emitted from a chimney. Where a continuing actionable nuisance is proved, only in exceptional circumstances should the court award damages in lieu of an injunction.

Kennaway v *Thompson*, 1980 – Noise from powerboats (**390**)

Defences

Certain defences are available to a person who is charged with committing the nuisance:

(a) The injury is trivial. The legal maxim is: *De minimis non curat lex* (the law does not concern itself with trifling matters). Such a case would be an extremely short exposure to fumes from road repairs.

(b) The so-called nuisance arose from the lawful use of the land (*Bradford Corporation* v *Pickles* (1895), see Chapter 20).

(c) The nuisance was covered by statutory authority, under the general principles elucidated under the defence of statutory authority.

(d) The person committing the alleged nuisance has acquired a prescriptive right through 20 years' use to do what is complained of.

(e) The character of the neighbourhood is such that the act, while it might be a nuisance elsewhere, cannot be regarded as such in that particular district.

(f) Consent of the claimant is a possible defence but consent will not be implied simply because the claimant came to the premises knowing that the nuisance was in existence (*Bliss* v *Hall*, 1838).

Sturges v *Bridgman*, 1879 – Nuisance and prescription (**391**)

Remoteness of damage

For the purpose of deciding problems of remoteness of damage the Privy Council held in *The Wagon Mound (No 2)* [1966] 2 All ER 709 (see Chapter 20) that in a case of nuisance, as of negligence, it is not enough that the damage was a direct result of the nuisance if the injury was not *foreseeable*. Thus in *Lamb* v *Camden London Borough Council* [1981] 2 All ER 408 the claimants owned a house which had been let furnished but because of local council work a water main nearby was broken and escaping water severely damaged the house. The tenant left and the house was then unoccupied. While it was empty squatters entered and caused extensive damage before they were evicted. The defendants admitted liability in nuisance and on the issue of the squatters' damage the Court of Appeal held that it was too remote to form part of any damages. (See also *British Celanese* v *Hunt* (1969) and *Page Motors* v *Epsom and Ewell Borough Council* (1981).)

Statutory intervention

We have been discussing the civil law of nuisance. However, there is also the Environmental Protection Act 1990. Under s 80 of that Act an officer of a local authority who is satisfied that a nuisance exists can serve the person responsible for creating it with an abatement notice. Failure to comply is a criminal offence though there is a right of appeal. The section can be used for a wide variety of nuisances from noisy parties to dust from construction or demolition. A complaint is initiated through the environmental health department of the relevant local authority.

There is also the Noise and Statutory Nuisance Act 1993 (as amended by the Clean Neighbourhoods and Environment Act 2005). This makes noise in the street a statutory nuisance and includes provisions in regard to loudspeakers and their operation in the street and, most importantly, audible intruder alarms. Provision is also made for the charging by the enforcing local authority of expenses which have been incurred in abating or preventing the recurrence of the nuisance. Payment is by the person(s) responsible.

Of particular importance is the suppression of the 'rogue' car alarm. However, the procedures involved are complicated and this may put the relevant authorities off enforcement. The first complaint is to the local environmental health officer (EHO). The EHO must then locate the vehicle and affix an 'abatement notice' to it. He must then wait one hour and only then can he act by breaking into the car to switch off the alarm. The Act also states that the EHO must do as little damage to the vehicle as possible and leave it as secure as when he found it. This may mean that other experts such as locksmiths will have to travel with the EHO, which will make enforcement more difficult.

There has been other statutory intervention as follows:

- the Noise Act 1996 (as amended by the Clean Neighbourhoods and Environment Act 2005) gives the local authority a duty to investigate any complaint that excessive noise is coming from another house. If the local authority officer is satisfied that there is such noise and that it exceeds permitted limits and is being emitted between 11 pm and 7 am he may serve a warning notice. If the person responsible continues to create noise during the period specified in the notice and in excess of the permitted level, he is guilty of an offence;
- the Protection from Harassment Act 1997 may also be of help. It is a very wide-ranging Act and covers noisy and nuisance neighbours. These activities could be the subject of criminal or civil proceedings under the Act.

However, the High Court ruled in *Huntingdon Life Sciences Ltd* v *Curtin* (1997) *The Times*, 11 December that Parliament had clearly not intended the Act to be used to prevent individuals

from exercising their right to protest and demonstrate about issues of public interest, and the courts would resist any attempts to interpret the statute widely. The claimants were refused an injunction against the British Union for the Abolition of Vivisection which was demonstrating by a non-threatening campaign against the company which used animals for research purposes.

With regard to nuisance caused by the spread of weeds, it is uncertain whether the common law has any rules controlling this (see *Giles* v *Walker* (1890)), and reference should be made to the Weeds Act 1959. Where any one of five specified weeds is out of control the Minister of Agriculture can call on the occupier of the land concerned to take action to stop them from spreading. The Minister can get the work done himself if the occupier defaults, and prosecute the occupier.

Negligence – generally

In ordinary language negligence may simply mean not done intentionally, e.g. the negligent publication of a libel. But while negligence may be one factor or ingredient in another tort, it is also a specific and independent tort with which we are now concerned.

The tort of negligence has three ingredients and to succeed in an action the claimant must show (i) the existence of a duty to take care which was owed to him by the defendant, (ii) breach of such duty by the defendant, and (iii) resulting damage to the claimant.

The duty of care – generally

Whether a duty of care exists or not is a question of law for the judge to decide, and it is necessary to know how this is done. The law of contract dominated the legal scene in the nineteenth century and this affected the law of torts. The judges, influenced by the doctrine of privity of contract, used it to establish the existence of a duty of care in negligence in those cases where a contract existed by laying down the principle that, if A is contractually liable to B, he cannot simultaneously be liable to C in tort for the same act or omission.

The House of Lords in *Donoghue* v *Stevenson* (1932) (see Chapter 20) dispelled the confusion caused by the application of the doctrine of privity of contract where physical injury is caused to the claimant by the defendant's negligent act. As we have seen from the *Donoghue* case, the fact that the maker of the ginger beer was liable for its defects in *contract* to the café owner did not prevent him being liable also to *Donoghue* in the *tort of negligence*. There is, of course, now the possibility of giving third parties rights in contract so that the privity rule is avoided, although the tort claim would still be available, and where the rule of privity applies, the tort remedy is the only one available. This results from the Contracts (Rights of Third Parties) Act 1999 (see further Chapter 10). In this case Lord Atkin also formulated what has now become the classic test for establishing a duty of care when he said:

> You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being affected when I am directing my mind to the acts or omissions which are called in question.