Judicial Land Use Controls: The Law of Nuisance

- Torts + Property
- Remedies
  - Damages
    - Temporary or Permanent
  - Injunctions
    - Temporary or Permanent
- Balancing

Nuisance
A substantial nontrespassory invasion of use and enjoyment of land that is caused by—
1. negligent, reckless, or ultrahazardous activities, or
2. activities that are intentional and unreasonable.

Private Nuisance

- Sic utere tuo ut alienum non laedas
- Substantial non-trespassory invasion of another’s interest in the private use and enjoyment of land

Morgan v. High Penn Oil Cont’d

Private Nuisance Cont’d

- If unintentional—
  - Negligent, reckless or ultrahazardous
- If intentional—
  - Unreasonable under the circumstances
Morgan v. High Penn Oil Cont’d

What is Intentional?

• Acts for the purpose of causing it,
• Knows that it is resulting from his conduct, or
• Knows that it is substantially likely to result from his conduct.

Morgan v. High Penn Oil Cont’d

What is Unreasonable?

• Consider level of interference. Does interference cross some threshold?
• Restatement: balance the gravity of harm against the utility of the actor’s conduct.
Morgan v. High Penn Oil Cont’d

Coase Questions

• Who should be allowed to harm whom?
• Cheapest cost avoider?
• Cheapest way to avoid the problem?
• Who should pay for the avoidance or abatement of the problem?

Estancias Dallas Corp. v. Schultz,
500 S.W.2d 217 (Tex. 1973), Casebook, p. 646.

Remedies

• Balance the Equities
  • Injury to defendant and public if injunction granted (*significant* injury to the public?)
  • Injury to plaintiff if petition denied
  • Evidence presented/trial tactics
Estancias Dallas Corp. v. Schultz Cont’d

Remedies Cont’d

• Coase
• Effect of assignment of right
  • Efficiency
  • Fairness
  • Bargaining: bilateral monopoly

Boomer v. Atlantic Cement Co.,

Balancing

• When should a court issue an injunction?
  • Before Boomer: property rule
  • After Boomer: liability rule
Boomer v. Atlantic Cement Co. Cont’d

Balancing Cont’d

• Why does the court change the rule?
  • Nature of problem
  • Competency of court
  • Disparity in damages of granting versus not granting injunction ($45 million and 300 employees)

• How could the court avoid the problems associated with a normal injunction?
  • Grant and postpone option
  • Grant and vacate option

• Damages
  • Temporary v. Permanent
  • Servitude (license or easement)
Boomer v. Atlantic Cement Co. Cont’d

Results of Change in Rule

- Efficiency: multiple suits
- Fairness
- Bargaining
- Incentives to innovate