

5.75 NUISANCE (Approved 12/87)

A. In General

The plaintiff (_____) alleges that the defendant (_____) created (and/or maintained) a nuisance on defendant's property which resulted in damage suffered by plaintiff (and/or to plaintiff's property). It is for you the members of the jury to determine whether the condition created (and/or maintained) by defendant constituted a nuisance.

The word "nuisance," as used here, means an unreasonable interference with the use and enjoyment of one's land which results in material interference with the ordinary comfort of human existence, *i.e.*, annoyance, inconvenience, discomfort or harm to the person or property of another. An owner of property has the right to the reasonable use of his/her land. In determining what is reasonable, you must weigh the utility of defendant's conduct against the extent of the harm suffered by plaintiff. The question is not simply whether a person, here plaintiff, is annoyed or disturbed, but whether the annoyance or disturbance arises from an unreasonable use of defendant's land.

The creation of trifling annoyances or inconvenience does not constitute actionable nuisance. The test is whether the defendant's activities about which plaintiff complains materially and unreasonably interferes with plaintiff's use of

his/her property (comforts or existence) according to the simple tastes and unaffected notions generally prevailing among plain people, *not* according to exceptionally refined, uncommon or luxurious habits of living.

Cases:

Sans v. Ramsey Golf & Country Club, Inc., 29 N.J. 438, 449 (1959); *see also Berg v. Reaction Motors Div.*, 37 N.J. 396 (1962), as to strict liability for nuisance in creating air vibrations resulting in damage to plaintiff's property (punitive damages denied); 4 *Restatement, Torts*, Chapter 40 (Private Nuisance); *Prosser, Torts* 389 *et seq.* (2d ed. 1955); 1 *Harper and James, the Law of Torts*, 64 *et seq.* (1956).

As between an "absolute nuisance" and "a nuisance growing out of negligence," in the latter situation the issue of contributory negligence may be asserted as a defense. "The operative facts rather than the label should control and the result should justly be the same although the plaintiff affixes a nuisance label to the defendant's negligent conduct." *Hartman v. Brigantine*, 23 N.J. 530 (1957). Otherwise, assumption of risk has been said to be the proper defense in a case involving a nuisance. *Thompson v. Petrozzello*, 5 N.J. Misc. 645 (Sup. Ct. 1927).

Any private erection obstructing a public street is *prima facie* a nuisance but one may stand teams and vehicles in front of his/her property for a reasonable time, he/she may obstruct the sidewalk temporarily to receive and deliver goods, he/she may pile building materials in front of a building during erection, and keep them there for a reasonable time, he/she may maintain scaffolds, etc., needed in the erection of outside walls: all of such uses are generally considered lawful unless unreasonable. *Mann v. Max*, 93 N.J.L. 191 (E. & A. 1919).

Whether wild animals are said to be nuisance per se, ultra hazardous or abnormally dangerous, exposure of public to them creates serious risk of harm to others which cannot be eliminated by exercise of utmost care and the liability of all those producing that exposure shall be absolute. *Eyrich v. Earl*, 203 N.J. Super. 144 (App. Div. 1985).

Scientific and social progress sometimes reasonably require a reduction in personal comfort; on the other hand, fact that device represents a scientific advance and has social utility does not mean that it is permissible at any cost. *Rose v. Chaikin*, 187 N.J. Super. 210 (Ch. Div. 1982).

B. Blasting

A person or corporation engaged in blasting operations becomes liable for damages to neighboring properties where such damage is proximately caused by such blasting operations.

The defendant is liable for damages thus caused by its blasting operations even though it took reasonable precautions to prevent damage to the neighboring properties.

Before you can find a verdict in favor of the plaintiff, _____, and against the defendant, _____, on the plaintiffs' claim, you must find from the evidence:

1. That the plaintiff was the owner of the property [*describe property*];
2. That the defendant actually engaged in blasting operations, causing explosives to be discharged [*at the time and place alleged*];
3. That the plaintiff's building [*or other property*] was damaged;
4. That such damage was proximately caused by the defendant's blasting.

Case:

Berg v. Reaction Motors Div., 37 N.J. 396 (1962).