

**QUESTION 14 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V  
OR IN SOFTEST ANSWER SCREEN 14**

John Smith lived in Anytown, Michigan, which had an ordinance prohibiting dogs from defecating on property other than its owner's property. If a dog's owner is cited more than three times for violating the ordinance, the city had the power to put down the dog.

Mike Jones was Smith's neighbor. Smith owned Fido, a German Shephard dog. Jones hated Fido, because the dog would bark almost every night, causing Jones to often lose sleep. Jones eventually was to the point that he needed to stop Fido's barking. After some research, Jones located the dog ordinance, and developed a plan to convince city officials that Fido was defecating on his property. Specifically, Jones took pictures of Fido defecating in Smith's backyard, and edited the photos to make it look like Fido was doing it in Jones' yard. Jones then presented the photos on three separate occasions to city officials, who each time cited Smith for an ordinance violation. After the third citation, Jones requested that the city attorney prosecute Smith, and invoke the remedy of putting down Fido. The city attorney refused.

Undeterred, and still losing sleep on a nightly basis, Jones filed an action in the local district court, asserting the repeated ordinance violations and asking the court to issue an order for the destruction of Fido, and to hold Fido in the local animal shelter pending the outcome of the case. The court placed Fido in the shelter. Smith then answered the complaint by denying that Fido had ever been in Jones' yard, let alone defecating in it. Smith also asserted that the photos were faked. Three months later at the bench trial, the court utilized an expert who testified that the photos were in fact fake. At that point, Jones agreed to dismiss the case and Fido was eventually returned to Smith.

Fuming about the frivolous lawsuit and Jones' antics, Smith filed a tort claim against Jones in circuit court, seeking to recoup as damages the costs of defending the district court action and for emotional distress.

**Applying Michigan law, identify the claim brought by Smith and explain whether it will succeed.**

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