

The owner of a home in a rural area had for many years enjoyed unspoiled views of the surrounding countryside from her back deck. Several months ago, a neighboring farmer placed unsightly items, including an old, rusted tractor and some machine parts, entirely on his own property, but in a location visible from the homeowner's deck.

The homeowner asked the farmer to move the items to a different area of the farm, out of the homeowner's line of sight. The farmer acknowledged that it was not common for farmers in the area to keep old equipment on their land in locations visible to neighbors, but nonetheless refused to move the items. Concerned that the farmer's placement of the items might adversely affect the resale value of the property, the homeowner paid for an appraisal of her own property. The appraisal determined that the market value of the property had not been diminished by the farmer's actions.

If the homeowner were to sue the farmer for private nuisance, which of the following would be the farmer's best argument against liability?

- A. The unsightly items have not caused a decrease in the market value of the homeowner's property. (7%)
- B. The unsightly items do not physically encroach on the homeowner's property. (3%)
- C. It is not common for farmers in the area to keep old equipment on their land in places that are visible to neighbors. (1%)
- D. Unsightly conditions ordinarily do not of themselves amount to an unreasonable interference with the use and enjoyment of a neighboring property. (87%)

Correct

87% Answered correctly

02 mins, 16 secs Time Spent

2023 Version

Explanation:

The farmer will be liable for **private nuisance** if the homeowner proves that the farmer's **interference** with the **use and enjoyment** of the homeowner's **property** is both:

substantial – offensive, annoying, or intolerable to a normal person in the community *and* **unreasonable** – the **severity** of the **plaintiff's harm outweighs** the **utility** of the **defendant's conduct**.

Here, the farmer placed unsightly items on his property in a location that was visible from the homeowner's deck. A normal person in the community would likely find that annoying or intolerable. As a result, the homeowner can likely establish that the farmer's interference with the use of her land was substantial. However, the farmer can argue that unsightly conditions alone ordinarily do not unreasonably interfere with the use and enjoyment of a neighboring property. Therefore, this would be the farmer's *best* argument against liability for private nuisance.*

*A court may still determine that the farmer is liable for private nuisance. However, the question asks for the best argument against liability, and this is the best option of those presented.

(Choice A) To establish a private nuisance claim, the homeowner need only prove that the farmer's unsightly items substantially and unreasonably interfered with the use and enjoyment of her property—not that they decreased her property's market value. Therefore, the absence of such a decrease would not be the best argument for the farmer to defeat liability.

(Choice B) Unlike [trespass](#), private nuisance does not require a physical encroachment on the plaintiff's property. Instead, a defendant can be liable for private nuisance if items on the defendant's property substantially and unreasonably interfere with the plaintiff's use and enjoyment of his/her property (eg, noxious odors, bright lights).

(Choice C) The fact that it is not common for farmers in the area to keep old equipment on their land in places that are visible to neighbors *supports* the homeowner's claim that the farmer substantially interfered with her property. Therefore, this argument would not provide the farmer with an adequate defense against liability.

Educational objective:

Private nuisance is an interference with the plaintiff's use and enjoyment of his/her property that is both substantial (ie, offensive, annoying, or intolerable to a normal person in the community) and unreasonable (ie, severity of harm outweighs utility of conduct).

References

Restatement (Second) of Torts § 821D (Am. Law Inst. 1979) (defining private nuisance).

Restatement (Second) of Torts § 826 (Am. Law Inst. 1979) (explaining the unreasonable-interference requirement).

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Private nuisance claim

