

For ten years, a woman and her neighbor have owned summer vacation homes on adjoining lots. A stream flows through both lots. As a result of a childhood swimming accident, the woman is afraid of water and has never gone close to the stream.

The neighbor built a dam on his property that has completely stopped the flow of the stream to the woman's property.

In a suit by the woman against the neighbor, will the woman prevail?

- A. No, because the woman made no use of the stream.
- B. No, if the dam was built in conformity with all applicable laws.
- C. Yes, if the damming unreasonably interferes with the use and enjoyment of the woman's property.
- D. Yes, if the neighbor intended to affect the woman's property.

Explanation:

Liability for **private nuisance** arises when a defendant's **interference** with the **use and enjoyment of the plaintiff'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.

Therefore, a plaintiff who is not bothered by an interference with the use and enjoyment of his/her property can still prevail as long as a normal person in the community would find the interference offensive, annoying, or intolerable (ie, the interference is still substantial).

Here, the neighbor's dam interfered with the use and enjoyment of the woman's property by stopping the flow of a stream to her property. Although the woman was afraid of water and made no use of the stream, the interference was still *substantial* since a normal person in her community of summer vacation homes would likely be annoyed by the damming of the stream **(Choice A)**. Therefore, the woman will prevail if the interference was also *unreasonable*.

(Choice B) Although a defendant's compliance with the law is a **factor** that weighs in favor of a finding that an interference was not unreasonable, compliance with the law is not a complete defense to private nuisance. Therefore, though the dam's conformity with applicable laws weighs in the neighbor's favor, it does not—by itself—defeat the woman's claim.

(Choice D) Private nuisance requires proof that the defendant's conduct was tortious—but not necessarily intentional. So even if the neighbor did not intend to affect the woman's property, the woman could still prevail if the neighbor's conduct was negligent, reckless, or abnormally dangerous.

Educational objective:

Private nuisance is a substantial and unreasonable interference with the use and enjoyment of the plaintiff's property. An interference is substantial if a normal person in the community would find the interference offensive, annoying, or intolerable—even if the plaintiff is not personally bothered by it.

References

Restatement (Second) of Torts §§ 821D, 822 (Am. Law Inst. 1979) (private nuisance).

Restatement (Second) of Torts § 821F (Am. Law Inst. 1979) (substantial interference requirement).

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

**Private nuisance
(substantial interference requirement)**



Substantial interference

©UWorld



No substantial interference