

A buyer bought a large, nicely kept house near a university campus. She was able to buy the house for a very good price because it was located directly across the street from a fraternity house known for its frequent late-night parties. The buyer knew of the fraternity's reputation before she bought the house.

The reputation was well deserved, and the buyer found the noise from the parties extremely unpleasant and disruptive.

The buyer has asked an attorney for legal advice regarding a possible nuisance claim against the fraternity.

Which of the following responses would best express the applicable law?

- A. "You have no nuisance claim, because the fraternity members have the right to use their property as they please."
- B. "You have no nuisance claim, because you came to the nuisance."
- C. "You might have a nuisance claim, but the fact that you bought the house fully aware of the fraternity's habitual late-night activities will count against your claim and could help defeat it."
- D. "You will be able to recover damages in a nuisance action, because the late-night activities of the fraternity members violate your right to the quiet enjoyment of your property."

Explanation:

Liability for **private nuisance** arises when the defendant's **interference** with the plaintiff's use and enjoyment of his/her property was 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.

But if the plaintiff **came to the nuisance** (ie, acquired or improved property next to a known nuisance), then the court will consider this factor in determining **whether the nuisance is actionable** (ie, whether the plaintiff can recover for the nuisance).

Here, the buyer might have a private nuisance claim since the fraternity's late-night parties were extremely unpleasant and disruptive to her at home (substantial and unreasonable interference). But since she bought her home knowing the fraternity's reputation for late-night parties (ie, she came to the nuisance), this fact will count against her claim and could help defeat it.

(Choice A) Landowners have the right to use their property in any *reasonable* way—not in any way they please. Therefore, the buyer could prevail on her nuisance claim if the fraternity's activities were *unreasonable* and substantially interfered with the use and enjoyment of her home.

(Choice B) The fact that the buyer came to the nuisance is a factor in determining whether the nuisance is actionable but does not bar her claim.

(Choice D) Even if the fraternity's activities violate the buyer's right to enjoy her property, the fact that she knew the fraternity's reputation (ie, she came to the nuisance) could help defeat her claim.

Educational objective:

Coming to the nuisance—ie, acquiring or improving property next to a known nuisance—does not bar a nuisance claim. However, the court will consider this factor in determining whether the plaintiff can recover.

References

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

Restatement (Second) of Torts § 840D (Am. Law Inst. 1979) (coming to the nuisance).

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Actionable private nuisance
(coming to the nuisance)

