

A manufacturing company constructed a factory near a small town. Five years later, a woman purchased a home one mile away from the factory. Her home is the only residence within five miles of the factory. During this time, the company had steady business but produced very little smoke.

Two years after the woman moved into her home, the company secured several large contracts and expanded its factory to add several large smokestacks that emit smoke on a continual basis. Other factories commonly use the same number of smokestacks in their operations, and such use complies with government regulations. The woman's home is downwind from the factory, so the smoke constantly blows toward her home. The woman has suffered breathing difficulties, constant headaches, and other sicknesses ever since the factory expanded. The value of her property has also severely declined.

The woman sued the manufacturing company for private nuisance.

Will the woman be likely to prevail as a matter of law?

- A. No, because the company used the same number of smokestacks in its operations as other companies and complied with government regulations.
- B. No, because the woman knowingly purchased a home one mile away from a factory that was in operation at the time of purchase.
- C. Yes, because the smoke caused the value of the woman's property to severely decline.
- D. Yes, because the smoke unreasonably interfered with the woman's use and enjoyment of her property.

Explanation:

A **private nuisance** claim requires proof that 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.

Severe harm (eg, physical harm to those on the property) always **outweighs** the utility of the defendant's conduct. As a result, an interference that causes severe harm is **unreasonable as a matter of law**.

Here, the smoke from the factory interfered with the woman's use and enjoyment of her property by causing her physical harm and reducing the value of her property. The interference was substantial since a normal homeowner would find it annoying or intolerable. It was also unreasonable because the smoke caused the woman severe harm—including difficulty breathing and constant headaches. Therefore, she will likely prevail on this claim.

(Choice A) The company's interference is **unreasonable** as a matter of law because it caused severe harm. Therefore, evidence of the company's *reasonableness*—ie, operating with the same number of smokestacks as other companies and complying with government regulations—is no defense.

(Choice B) Whether a plaintiff "came to the nuisance" because the nuisance existed before the plaintiff moved in is merely one factor that may be considered in determining whether an interference is actionable. It is not a defense.

(Choice C) The woman could recover damages for the reduction of her property's value caused by the smoke, but this is not required for her to prevail. Instead, she will prevail because the smoke unreasonably interfered with her use and enjoyment of her property.

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 the harm outweighs the utility of the conduct). Severe harm is unreasonable as a matter of law.

References

Restatement (Second) of Torts §§ 167, 821D (Am. Law Inst. 1979) (private nuisance).

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

Restatement (Second) of Torts § 829A cmt. b (Am. Law Inst. 1979) (severe harm).

**Private nuisance
(substantial interference requirement)**



Substantial interference



No substantial interference