

A manufacturing plant emitted a faint noise even though the owner had installed state-of-the-art sound dampeners. The plant operated only on weekdays and only during daylight hours. A homeowner who lived near the plant worked a night shift and could not sleep when he arrived home because of the noise from the plant. The other residents in the area did not notice the noise.

Does the homeowner have a viable nuisance claim against the owner of the plant?

- A. No, because the homeowner is unusually sensitive to noise during the day.
- B. No, because the plant operates only during the day.
- C. Yes, because the noise is heard beyond the boundaries of the plant.
- D. Yes, because the operation of the plant interferes with the homeowner's quiet use and enjoyment of his property.

## Explanation:

### Private nuisance v. Public nuisance

(action brought by private plaintiff)

	Interference	Unreasonable	Harm
<b>Public</b>	Public right—eg, health, safety, peace, property	Interference is significant or violated law	Special harm—harm different from that of public at large*
<b>Private</b>	Use & enjoyment of property	Severity of harm outweighs utility of interference	Substantial interference—offensive, annoying, or intolerable to normal person

\*Proof of harm not required when plaintiff is public entity or government actor.

Nuisance can be either public (interfering with a right common to the general public) OR private (interfering with a private property right—as seen here). Liability for **private nuisance** arises when the defendant's **tortious interference** with the plaintiff's use and enjoyment of his/her 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.

An interference is **not substantial** if the plaintiff has an **unusual sensitivity** that causes him/her to find it offensive, annoying, or intolerable when a normal person in the community would not.

Here, the manufacturing plant interfered with the homeowner's use and enjoyment of his property by emitting a noise that kept him awake during the day (**Choice D**). But since the homeowner worked a night shift, he was unusually sensitive to the noise that other residents in the community did not notice. Therefore, the interference was not substantial and the homeowner does not have a viable nuisance claim.

**(Choice B)** Although the plant only operates during the day, the homeowner could still recover if the noise was offensive, annoying, or intolerable to normal people in the community (eg, had the other residents found the noise too loud for daytime).

**(Choice C)** The noise was heard beyond the boundaries of the plant—but only by the homeowner. Since the homeowner was disturbed by that noise when none of the other residents noticed it (ie, he was unusually sensitive), his nuisance claim will fail.

### Educational objective:

Private nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of his/her property. An interference is not substantial if the plaintiff's unusual sensitivity causes him/her to find it offensive, annoying, or intolerable when a normal person in the community would not.

### **References**

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

Restatement (Second) of Torts § 821F (Am. Law Inst. 1979) (significant harm requirement).

Restatement (Second) of Torts § 822 (Am. Law Inst. 1979) (liability for nuisance).

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