

A businesswoman owns a tract of land in fee simple, and an environmentalist owns the adjoining tract of land in fee simple. The businesswoman has kept the lawns and trees on her land trimmed and neat. The environmentalist "lets nature take its course" on his land. The result on the environmentalist's land is a tangle of underbrush, fallen trees, and standing trees that are in danger of losing limbs. Many of the trees on the environmentalist's land are near the businesswoman's property line. In the past, debris and large limbs have been blown from the environmentalist's land onto the businesswoman's land. By local standards the environmentalist's land is an eyesore that depresses market values of real property in the vicinity, but the condition of the land violates no applicable laws or ordinances.

The businesswoman has demanded that the environmentalist keep the trees near her land trimmed. The environmentalist has refused.

The businesswoman brought an appropriate action against the environmentalist to require him to abate what she alleges to be a nuisance. In the lawsuit, the only issue is whether the condition of the environmentalist's land constitutes a nuisance.

What is the businesswoman's strongest argument?

- A. The condition of the environmentalist's land cannot otherwise be challenged under any law or ordinance.
- B. The condition of the environmentalist's land has an adverse impact on real estate values.
- C. The condition of the environmentalist's land poses a danger to the occupants of her land.
- D. The condition of the environmentalist's land violates community aesthetic standards.

## Explanation:

**Private nuisance** is a substantial and unreasonable interference with the use and enjoyment of the plaintiff's property. An interference arising from a **natural condition on land** (eg, encroaching trees or plants) is **generally not a nuisance**. However, some courts have held that a natural condition on land **may be a nuisance** if it caused—or poses an **imminent danger** of—**actual harm** to adjoining property or those on it.

Here, the environmentalist has kept his land in its natural condition. As a result, debris and large tree limbs from his land have blown onto the businesswoman's property in the past. And since many of the environmentalist's trees are near the businesswoman's property line and in danger of losing limbs, her strongest argument for why the environmentalist's land constitutes a nuisance is that the condition of his land poses an imminent danger to the occupants of her land.

**(Choice A)** Compliance with the law is one factor that weighs in favor of a finding that the interference was not **unreasonable**. Therefore, the fact that the condition of the environmentalist's land cannot be challenged under any law or ordinance favors the environmentalist—not the businesswoman.

**(Choices B & D)** A natural condition on land can only support a private nuisance claim if the condition caused—or poses an imminent danger of—actual harm to adjoining property or those on it. Adverse impacts on real estate values and violations of community aesthetic standards do not cause—or pose an imminent danger of—actual harm to adjoining property or those on it. Therefore, these are not the businesswoman's strongest arguments.

## Educational objective:

An interference arising from a natural condition on land is generally not a nuisance. However, some courts have held that a natural condition may be a nuisance if it caused, or poses an imminent danger of, actual harm to adjoining property or those on it.

## References

Restatement (Second) of Torts § 821D (Am. Law Inst. 1977) (private nuisance).

Restatement (Second) of Torts § 840 (Am. Law Inst. 1977) (failure to abate harmful natural condition on land).

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## Private nuisance claim

