

A gas company built a large refining facility that conformed to zoning requirements on land near a landowner's property. The landowner had his own home and a mini-golf business on his property.

In a nuisance action against the gas company, the landowner established that the refinery emitted fumes that made many people feel quite sick when they were outside on his property for longer than a few minutes. The landowner's mini-golf business had greatly declined as a consequence, and the value of his property had gone down markedly.

Is the landowner likely to prevail?

- A. No, because the landowner has offered no evidence demonstrating that the gas company was negligent.
- B. No, because the refinery conforms to the zoning requirements.
- C. Yes, because the refinery has substantially and unreasonably interfered with the landowner's use and enjoyment of his property.
- D. Yes, because the value of the landowner's property has declined.

Explanation:

A nuisance can be either public (interfering with a public right—eg, blocking a public highway) *or* private (interfering with a private property right—as seen here). Liability for **private nuisance** arises when the 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 gravity of the plaintiff's harm outweighs the utility of the defendant's conduct.

Severe harm (eg, bodily harm to persons on the property) will always outweigh the utility of the defendant's conduct. Therefore, an interference that causes severe harm is **unreasonable as a matter of law**.

Here, the gas company's refinery substantially interfered with the use and enjoyment of the landowner's property (home and business) by emitting fumes that made people feel quite sick when they were on the property for more than a few minutes. And since the fumes caused physical illness (severe harm), that interference was unreasonable as a matter of law. Therefore, the landowner will likely prevail on his nuisance claim.

(Choice A) For private nuisance, the defendant's conduct must be tortious—but not necessarily negligent (ie, creating an unreasonable risk of interference). Therefore, the landowner can prevail even if he offers no evidence demonstrating that the gas company was negligent.

(Choice B) Compliance with zoning requirements—although not a complete defense to private nuisance—can help show that the defendant's interference was not unreasonable. But here, since the gas company's interference was unreasonable as a matter of law (because the company's fumes caused severe harm), the company's regulatory compliance is inconsequential.

(Choice D) Private nuisance allows the plaintiff to recover damages for a reduction in property value, but a reduction in property value is not required to prevail. Therefore, the landowner will likely prevail because the refinery substantially and unreasonably interfered with the use and enjoyment of his property—not because the value of the property has declined.

Educational objective:

Private nuisance is a substantial and unreasonable interference with the use and enjoyment of the plaintiff's property. An interference is unreasonable as a matter of law when the plaintiff's harm is severe.

References

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

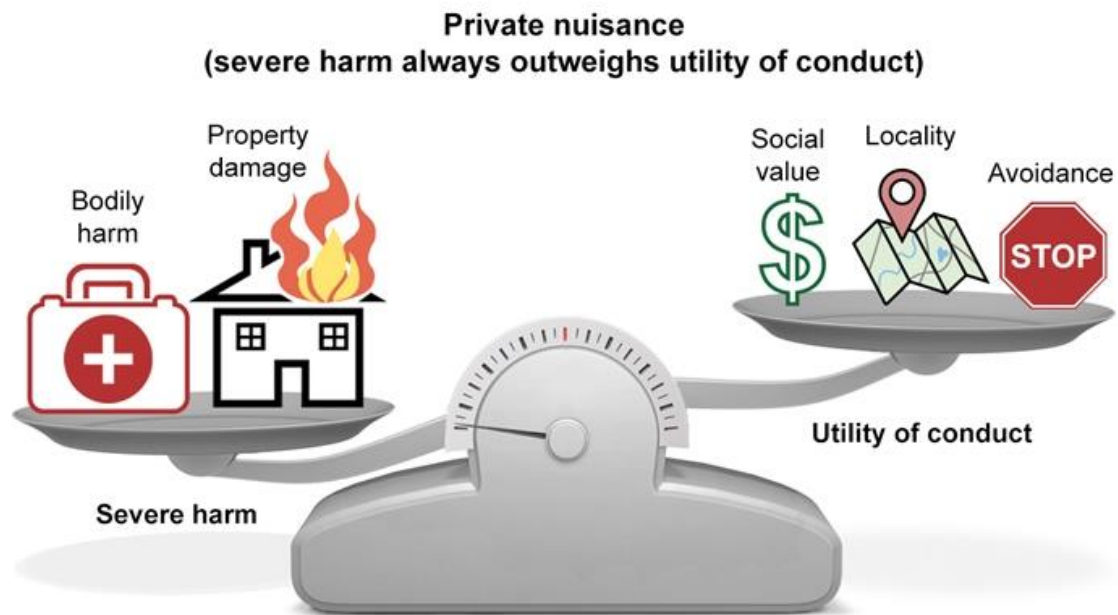
Restatement (Second) of Torts § 821F (Am. Law Inst. 1979) (substantial harm requirement).

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

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

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