

A recently established law school constructed its building in a quiet residential neighborhood. The law school had obtained all the necessary municipal permits for the construction of the building, which included a large clock tower whose clock chimed every hour. The chimes disturbed only one homeowner in the neighborhood, who had purchased her house prior to the construction of the building. The homeowner was abnormally sensitive to ringing sounds, such as bells and sirens, and found the chimes to be extremely annoying.

In a nuisance action by the homeowner against the law school, will the homeowner be likely to prevail?

- A. No, because the chimes do not disturb the other residents of the neighborhood.
- B. No, because the law school had obtained the requisite municipal permits to erect the clock tower.
- C. Yes, because the chimes interfere with the homeowner's use and enjoyment of her property.
- D. Yes, because the homeowner purchased her house prior to the construction of the building.

Explanation:

Nuisance can be either public (interfering with a right common to the general public) OR private (interfering with a private property right—as alleged here). Liability for **private nuisance** arises when the defendant's **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's **abnormal sensitivity** causes him/her to find the interference offensive, annoying, or intolerable when a normal person in the community would not.

Here, the law school interfered with the homeowner's use and enjoyment of her property by constructing a large clock tower whose clock chimed every hour. But since the homeowner was abnormally sensitive to ringing sounds, she was the only one who found the chimes extremely annoying when no other residents were disturbed. Therefore, the interference was not substantial and the homeowner's nuisance action will likely fail

(Choice C).

(Choice B) Although compliance with zoning regulations (eg, obtaining municipal permits) helps show that the defendant's interference was not unreasonable, it is not a defense to nuisance. Instead, the homeowner's claim will fail because no other residents were disturbed by the chimes (no substantial interference).

(Choice D) Courts may consider priority in time (ie, whether the plaintiff came to the nuisance) when determining if a nuisance is actionable. Here, the homeowner's nuisance claim is *actionable* since she purchased her house before the clock tower was built. However, she will only *prevail* on this claim if she proves that the law school's interference was both substantial and unreasonable.

Educational objective:

An interference with a plaintiff's use and enjoyment of his/her property is not substantial (and will not support a nuisance claim) if the plaintiff's abnormal sensitivity causes him/her to find that interference offensive, annoying, or intolerable when a normal person in the community would not.

References

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

Restatement (Second) of Torts § 821F (Am. Law Inst. 1977) (substantial interference required).

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**Private nuisance
(substantial interference requirement)**



Substantial interference

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No substantial interference