

A company owned and operated a private golf course. One of the fairways on the course ran parallel to a navigable body of water that is rarely used by boats. The company was aware that golfers frequently but unintentionally hit golf balls into the water when playing that hole because there were no barriers to prevent the balls from going into the water. The golf balls resulted in pollution of the water in violation of a local ordinance that prohibits the pollution of bodies of water in the jurisdiction.

A 12-year-old child was sailing on the water with his family when he was struck by a golf ball that a golfer unintentionally hit from the golf course toward the water. The child suffered a serious physical injury.

The injured child's parents have filed a public nuisance action against the company, on behalf of their child, to recover for his injuries.

Are the parents precluded from recovery?

- A. No, because of the attractive nuisance doctrine.
- B. No, because the child suffered harm that was different from that suffered by the public at large.
- C. Yes, because the child did not have an ownership interest in land.
- D. Yes, because the golfer's action was unintentional.

Explanation:

Public nuisance is an unreasonable interference with a right common to the general public, which requires proof that:

the defendant **interfered with a public right**—eg, affecting the public by polluting bodies of water—and

that interference was **unreasonable**—ie, it (1) significantly affected public health, safety, peace, or property rights or (2) **violated an ordinance**, statute, or administrative regulation.

Generally, only a public entity (eg, a state) can sue for public nuisance. However, a **private individual** can bring an action for public nuisance if that individual suffered **special damage**—ie, **harm different** from (not merely greater in extent or degree than) the harm sustained by the public at large.

Here, the company interfered with a public right by polluting the navigable body of water with golf balls from its course. This interference was unreasonable because it violated a local ordinance. But since the child is a private individual, his parents will prevail on a public nuisance claim on his behalf only if they can prove that his harm was different from the harm (pollution) sustained by the public. The parents can likely do so because the child was struck by a golf ball while sailing (a rare use of the water). Therefore, they are not precluded from recovery.

(Choice A) The [attractive nuisance doctrine](#) applies when a child trespasses on the defendant's property and is injured by an artificial condition on that property (not seen here).

(Choice C) [Private nuisance](#) requires proof that the defendant interfered with the plaintiff's use and enjoyment of property in which the plaintiff has an ownership interest. However, *public* nuisance (the claim asserted here) does not require that the plaintiff have an ownership interest.

(Choice D) The fact that the golfer unintentionally hit the golf ball toward the water is irrelevant to determining whether the parents may recover from the company for public nuisance.

Educational objective:

A private individual can prevail in an action for public nuisance—ie, an unreasonable interference with a public right—if that individual can show harm different from that suffered by the public at large (ie, special damage).

References

Restatement (Second) of Torts § 821B (Am. Law Inst. 1977) (defining public nuisance).

Restatement (Second) of Torts § 821C (Am. Law Inst. 1977) (explaining that a private plaintiff must prove special damage).

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Public nuisance by private plaintiff
(special damage requirement)



Same harm ≠ special damage

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Different harm = special damage