

An elderly man has resided in a particular neighborhood throughout his life. As has always been his habit, the man brings stale bread to a nearby public park each day to feed the pigeons. There is no state law or local ordinance prohibiting him from doing so. However, in addition to the pigeon droppings and feathers generated by his actions, the food attracts rats.

Several mothers who recently started frequenting the park with their children have brought a private nuisance action against the man to enjoin him from feeding the pigeons. The mothers contend that the man's actions have created an unsafe environment for themselves and their children, interfered with their enjoyment of the park, and defaced park property.

Which of the following is the man's best defense to this action?

- A. The man's habit of feeding the pigeons predates the mothers' use of the park.
- B. The mothers do not have a possessory interest in the park.
- C. The mothers have not alleged an injury different in kind from the general public.
- D. There is no state law or local ordinance that prohibits feeding pigeons in public parks.

Explanation:

Private nuisance v. Public nuisance

(action brought by private plaintiff)

	Interference	Unreasonable	Harm
Public	Public right—eg, health, safety, peace, property	Interference is significant or violated law	Special harm—harm different from that of public at large*
Private	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.

A **private nuisance** is a thing or activity that substantially and unreasonably interferes with another individual's use or enjoyment of real property. To have **standing** to sue for private nuisance, the plaintiff must have some **possessory interest** in that property (eg, ownership, lease).

Here, the mothers do not have a possessory interest in a *public* park. Since the mothers have not alleged harm to their own real property interests—eg, that rats attracted to the park are invading their homes—they lack standing to bring a private nuisance action against the man. Therefore, that is the man's best defense.

(Choice A) A plaintiff "comes to the nuisance" by purchasing (not merely using) property near the defendant's premises, knowing of the nuisance operated by the defendant. This is one factor that the trier of fact may consider in deciding whether the plaintiff can recover for the nuisance, but it is not an automatic defense.

(Choice C) Private citizens (eg, the mothers) have a claim for *public* nuisance only if they suffer a **different kind of injury** than the general public. But this limitation does not apply to *private* nuisance actions.

(Choice D) The defendant's compliance with a statute, ordinance, or administrative regulation may be admitted in a nuisance action as evidence that the defendant's actions were reasonable. But it is not a complete defense.

Educational objective:

A person with a possessory interest in real property (eg, ownership, lease) may bring a private nuisance action if the defendant substantially and unreasonably interfered with the person's use and enjoyment of that property.

References

Restatement (Second) of Torts §§ 821D, 821E (Am. Law Inst. 1981) (recovery for private nuisance).

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