

A hotel company owns and operates a beachfront hotel. Under a contract with the city to restore a public beach, a dredging company placed a large and unavoidably dangerous stone-crushing machine on the city's land near the hotel. The machine creates a continuous and intense noise that is so disturbing to the hotel guests that they have canceled their hotel reservations in large numbers, resulting in a substantial loss to the hotel company.

The hotel company's best chance to recover damages for its financial losses from the dredging company is under the theory that the operation of the stone-crushing machine constitutes which of the following?

- A. A private nuisance.
- B. A trespass.
- C. An abnormally dangerous activity.
- D. Negligence.

## Explanation:

### Damages for private nuisance

**Compensatory**    Property damage (eg, repair cost, depreciation)  
                          Personal injury (eg, sickness, loss of consortium)  
                          Emotional distress (requires personal injury in some jurisdictions)  
                          Deprivation of use & enjoyment of property (ie, personal discomfort, inconvenience, annoyance)  
                          Financial loss (eg, lost business)

**Punitive**            Available when interference was intentional, willful, or malicious

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 severity of the plaintiff's harm outweighs the utility of the defendant's conduct.

Once these elements are met, the plaintiff can recover **damages for any type of harm** caused by the interference—including financial loss (eg, lost business).

Here, the dredging company interfered with the use and enjoyment of the hotel company's property when it placed a stone-crushing machine that created a continuous and intense noise nearby. The interference was likely substantial since it caused many hotel guests to cancel their reservations. And if that interference was also unreasonable—ie, if the hotel company's financial losses outweighed the utility of restoring the public beach—then the company could recover damages for its financial losses under the theory of private nuisance.

**(Choice B)** Trespass requires proof that the defendant intentionally *entered* the plaintiff's property without his/her consent. Here, since the dredging company's interference was caused by noise (not by an entry onto the hotel company's property), the dredging company is not liable for trespass.

**(Choice C)** A defendant who engages in an abnormally dangerous activity is strictly liable (ie, liable regardless of fault) for *physical harm* caused by a hazard that made the activity abnormally dangerous. Here, though the machine's operation was unavoidably (and possibly abnormally) dangerous, the hotel company cannot recover under this theory since it only suffered financial loss—not physical harm (eg, property damage, bodily harm).

**(Choice D)** The *economic loss rule* eliminates negligence liability for financial harm unaccompanied by physical harm. And since the hotel company is only seeking damages for financial harm—not physical harm such as property damage—it cannot recover under this theory.

**Educational objective:**

Private nuisance—a substantial and unreasonable interference with the use and enjoyment of the plaintiff's property—allows the plaintiff to recover damages for any type of harm, including financial loss.

**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).

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