

A company operates a factory that requires the use of very high voltage electricity. A man owns property adjacent to the company's plant where he has attempted to carry on a business that requires the use of sensitive electronic equipment. The effectiveness of the man's electronic equipment is impaired by electrical interference arising from the high voltage currents used in the company's plant. The man has complained to the company several times, with no result. There is no way that the company, by taking reasonable precautions, can avoid the interference with the man's operation that arises from the high voltage currents necessary to the company's operation.

In the man's action against the company to recover damages for the economic loss caused to him by the electrical interference, will the man prevail?

- A. No, because the man's harm was purely economic and did not arise from physical harm to his person or property.
- B. No, unless the company caused a substantial and unreasonable interference with the man's business.
- C. Yes, because the company's activity is abnormally dangerous.
- D. Yes, for loss suffered by the man after the company was made aware of the harm its activity was causing to the man.

## Explanation:

A plaintiff can recover **damages for economic loss** and other injuries related to a **private nuisance**. To recover such damages, the plaintiff must prove that the defendant's **interference** with the plaintiff's use and enjoyment of his/her property was 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 harm only results from the **plaintiff's hypersensitivity** (eg, abnormal aversion to the normal ringing of nearby church bells) or **abnormal use of his/her own property** (eg, sensitive photographic film harmed by heat from nearby factory).

Here, the company interfered with the use and enjoyment of the man's property through high-voltage electricity that impaired the *sensitive* electronic equipment required for his business (an abnormal use of the man's property). Therefore, the man will not recover economic damages for the company's interference with his business unless he can show that the interference was substantial—eg, that the high-voltage electricity interfered with the *normal* use of his property—and unreasonable.

**(Choice A)** Negligence requires proof of physical harm before a plaintiff can recover for economic loss, but nuisance allows a plaintiff to recover for pure economic loss (ie, economic loss not arising from physical harm). Therefore, the man's lack of physical harm does not preclude his recovery for economic loss based on nuisance.

**(Choice C)** The use of high-voltage electricity may be an abnormally dangerous activity—ie, an uncommon activity in the community that creates a foreseeable and highly significant risk of physical harm that cannot be eliminated by reasonable care. But the company would not be liable for engaging in that activity since the man's harm was caused by electrical interference—not the abnormal danger of that activity (eg, electric shock).

**(Choice D)** Private nuisance does not require proof that the defendant was aware of the harm caused by his/her activity. Therefore, if the company's interference was substantial and unreasonable, the man could recover for losses suffered before *and* after the company was made aware of his harm.

## Educational objective:

Private nuisance requires proof that the defendant substantially and unreasonably interfered with the plaintiff's use and enjoyment of his/her property. An interference is not substantial if the plaintiff's harm results from his/her hypersensitivity or abnormal use of the property.

## 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).

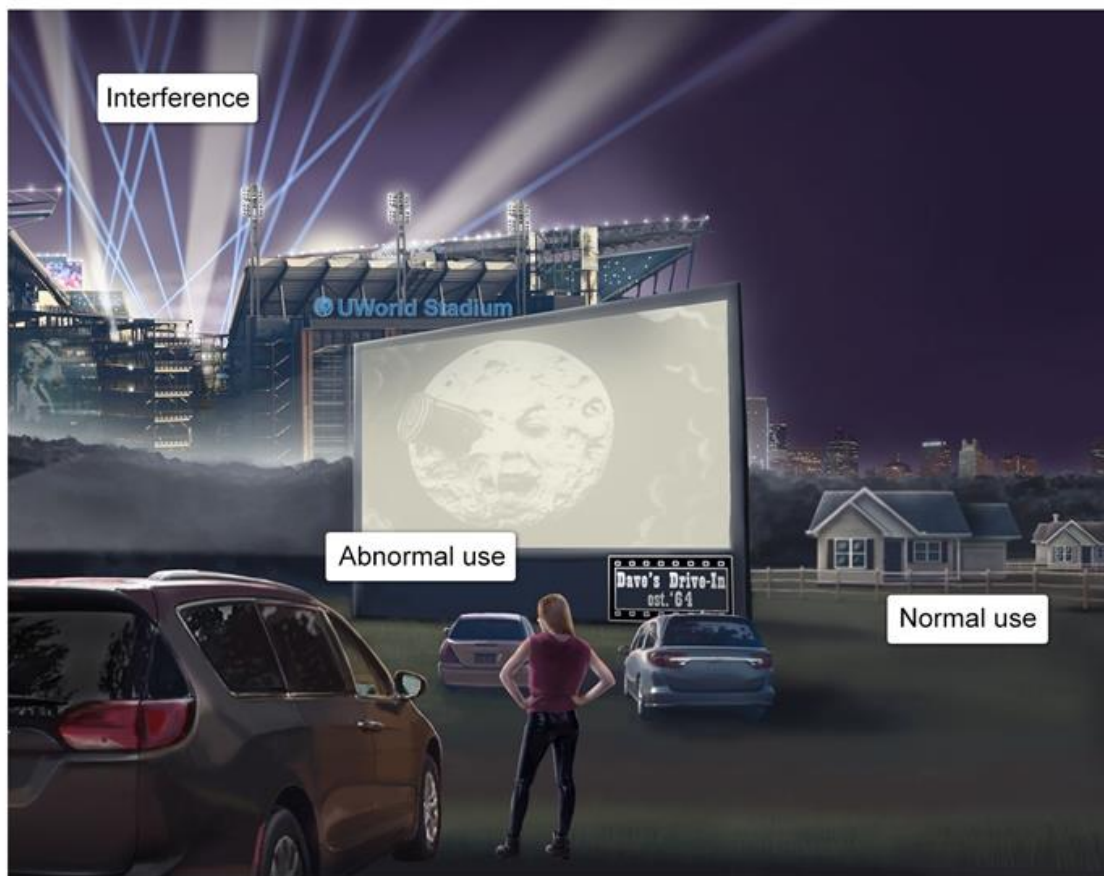
Postal Tel.-Cable Co. v. Pac. Gas & Elec. Co., 202 Cal. 382, 385 (1927) (using sensitive electrical equipment is an abnormal use of property).

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### Private nuisance

Normal & abnormal use harmed = substantial interference  
Only abnormal use harmed  $\neq$  substantial interference



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