

MONTEREY COLLEGE OF LAW

REAL PROPERTY

Final Examination

Spring 2024

Prof. J. O'Connell

Instructions:

Answer three (3) questions in this examination.

Total Time Allotted: Three (3) hours.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

Oscar owned two adjoining 40-acre parcels, Blackacre and Whiteacre. Blackacre is adjacent to a paved public road, Greenbranch Drive. Blackacre and Whiteacre were undeveloped except for dirt driveway across Blackacre connecting Whiteacre to Greenbranch Avenue. Whiteacre is bordered by an unpaved public road, Eaton Street, that is not maintained by the county and has been in extremely poor condition for many years.

In 2000, Oscar sold Whiteacre to Adam. Prior to and at the time of the sale transaction, Oscar and Adam did not discuss whether Adam had a right to use the driveway across Blackacre. Also in 2000, Adam built a home on Whiteacre, using the driveway across Blackacre for construction access.

In 2001, Adam moved into his home, and he laid gravel over the length of the driveway on Blackacre. He also then began using the driveway for access to his home on Whiteacre.

In 2018, Oscar sold Blackacre to Betty. Prior to and at the time of the sale transaction, Oscar and Betty did not discuss whether Adam had a right to use the driveway across Blackacre. Immediately after the sale, Adam told Betty he had an easement on Blackacre, and Betty said, "Oh, well then I won't get in your way."

In 2023, Adam sold Whiteacre to Charles. Immediately after the sale, Charles began building another two homes on Whiteacre. Betty saw the increased construction traffic across the driveway on Blackacre from Whiteacre to Greenbranch Avenue, so she erected a fence across the driveway.

The jurisdiction has a 20-year statute of limitations for prescriptive easement claims.

Discuss the rights of Charles and Betty, including any remedies they might seek.

Question 2

In 2016, Harold, Wanda and David were gifted Blackacre, taking title as “joint tenants.” Blackacre is a small parcel that is zoned only for single-family use and it has a single-family home on it.

In 2017, David provided a bank with a mortgage secured against David's interest in Blackacre.

In 2018, Harold deeded his interest in Blackacre to himself as a “tenant in common.”

In 2019, David paid \$30,000 towards necessary re-roofing of the home on Blackacre, and \$15,000 for a fountain on the front lawn. Harold also paid \$21,000 for the re-roofing. Harold and Wanda refused to pay for the fountain. Wanda refused to contribute to the re-roofing.

In 2020, Harold executed and recorded a deed stating he transferred his interest in Blackacre to himself as “joint tenant with David and Wanda.”

David recently died with a valid Will stating that Ed was to receive all rights, claims and interest David had at the time of his death in Blackacre.

What claims could Harold, Wanda and Ed make regarding Blackacre, including rights of ownership, partition, and accounting?

Question 3

Alex owns Blackacre, which has a single-family home on it in which Alex lives. Chris owns the adjoining property, Whiteacre, which also has a single-family home on it in which Chris lives.

Alex develops a permanent medical condition that requires 24-hour use of a medical device operated by electricity. Alex builds an 80-foot-tall wind turbine on Blackacre to generate electricity to store in a battery to operate his medical device in case of a power outage and to reduce his dependency on offsite, fossil fuel-based electricity. The turbine is built 20 feet from the common property line with Whiteacre, though the turbine blades do not cross over the property line above Whiteacre. When the wind blows strong enough, the turbine blades spin thereby causing a low frequency humming sound that can be heard all across Whiteacre.

After several months, Chris asks Alex to move the turbine or stop operating it because of the humming sound, and because Chris says he can feel an electromagnetic energy field coming from the turbine that makes him anxious and unable to sleep. Alex say, "No."

Several days later, Alex has a large sign facing Whiteacre attached to the turbine support tower that says, "Get a life!" The sign lit with flashing lights so it is visible from Whiteacre every night.

Several days later, Chris places dozens of fake video cameras facing Blackacre in locations all over Whiteacre. The cameras appear real and are seen by Alex whenever he looks toward Whiteacre. Several of the cameras are aligned so they are directly facing windows of Alex's home.

Discuss the rights of Alex and Chris, including any remedies they might seek.

REAL PROPERTY-MCL-ANSWER OUTLINE

Professor Justin O'Connell

Final, Spring 2024

Question 1

Easement Implied by Prior Use

Common ownership of both parcels initially existed.

The dirt driveway across Blackacre was visually apparent at the time of the sale to Adam. Whether the driveway was impliedly included in the rights to Adam is arguable.

- *Whiteacre was accessible via Eaton*
- *Eaton being in poor condition could have been a consideration in purchase, i.e., Whiteacre valued less due to access by a dirt road*
- *Dirt driveway might have been/might not have been reasonably necessary to the use of Whiteacre*

Even if an easement existed, misuse might have occurred when it was covered in gravel and later when traffic was increased due to new homes.

Easement by Necessity

Common ownership of both parcels initially existed.

Adam might argue his property is functionally landlocked, though adjacent to Eaton, due to inaccessibility vis Eaton, especially for construction.

However, increased burden of using Eaton alone might not be enough if court finds necessity does not include weighing Adam's burden of using another route, i.e., either he has no access or he has access (irrespective of inconvenience)

Easement by Prescription

If no other easement rights then Adam began using Blackacre without permission. Any prescriptive easement claim tacks onto subsequent owners of both properties.

2001 – visual intensification of use of driveway that was open and notorious

2018 – Adam's statement might have been false. Adam will argue she was not giving consent (i.e., his use was still hostile), and Betty will claim she gave consent even if she and Adam were wrong about a pre-existing easement (i.e., his use was no longer hostile).

Even if there were an easement by prescription, Charles' overuse can be enjoined. Betty would not be able to block driveway, but Charles could not use the driveway for construction and access for new homes.

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Question 2

Initial acquisition as joint tenants

David's mortgage has differing results depending on jurisdiction:

- *Lien theory jurisdiction – JT was not severed*
- *Title theory jurisdiction – JT was severed, resulting in David being a tenant in common with Harold and Wanda (who remained joint tenants as to each other)*

Harold's first deed to himself permissibly severs the JT so that thereafter he is a tenant in common (either with all 3 being TIC in a title jurisdiction, or W and D remaining JT in a lien theory jurisdiction)

Harold's second deed to himself does not validly create a JT, since he cannot add himself to title as a JT. JT only arises when co-owners acquire title as JT at the same time in the same document.

Ed's rights depend on lien vs title theory jurisdiction:

- *If lien theory, then D was a JT at the time of his death and had nothing to pass by way of his will*
- *If title theory, then D was a TIC at the time of his death and E takes D's rights and interest in the property*

Ed (if title theory jurisdiction) and Harold may seek proportional contribution from Wanda for roof, and would likely get that since a roof is needed. Ed (if title theory jurisdiction) may seek proportional contribution from Harold and Wanda for fountain, but might not get that since it appears cosmetic, not needed, and not consented to by Harold and Wanda.

Any owner could bring a partition action, and though partition by division of the property is the historically preferred method, that would not work do to zoning restrictions and characteristics of the property.

Question 3

Nuisance - Turbine

Chris can assert a claim of nuisance regarding the turbine.

- *It is large, unsightly, near the property line, possibly could have been built elsewhere even if needed. Chris' use of his property is harmed because he has a huge unsightly structure next door.*
- *It emits a sound that disturbs him – though it is unclear how loud it is and whether a reasonable person would find it a substantial interference with use of property.*
- *Electromagnetic energy – likely not a good claim. Chris appears ultrasensitive and there is likely not a field of study that supports his claim that one can be harmed from electromagnetic energy at all, let alone at whatever levels might be emitted. Standard is objective, and most people would not “feel” energy being emitted.*
- *Balance against social utility – medical device is needed. No indication turbine was build in spite, but rather with a meaningful purpose.*
- *Chris could ask for past damages, and either permanent injunction or future damages.*

Nuisance – Sign

Chris can assert a claim of nuisance regarding the sign.

- *It is large and lit at night and offensive*
- *Only way to not see it is to not look in a direction while on one's own property*
- *No social utility to balance – the sign serves no purpose other than to annoy irrespective of Alexs' right to speech*
- *Chris could ask for past damages, and either permanent injunction or future damages.*

Nuisance – Cameras

Alex can assert a claim of nuisance regarding the cameras

- *The cameras are pervasive*
- *Reasonable person would feel as though being surveilled*
- *No social utility – not for protection since they are fake and serve no purpose other than to annoy*
- *Alex could ask for past damages, and either permanent injunction or future damages.*

1)

EASEMENT

An easement is an interest that one person has in land owned by another, to use or control the land, or area above and below, for a specific limited purpose.

TYPE OF EASEMENT

Easement Appurtenant

An easement that runs with the land. EA occurs when there are two estates the dominant and servient estate. The dominant is the one that is benefiting from the easement. The servient is the one being burdened by the easement.

Here, the property that is being burdened by the easement, if the court is to grant one, is the Blackacre, held by both Oscar and Betty. The servient estate is Whiteacre, which is held by Adam and Charles.

Easement in Gross

An easement in gross is one that benefits a particular person and not a particular piece of land. An EG is one that is a specific benefit to a specific person. If the court is unsure whether there is an easement is gross or an easement appurtenant, the court tends to favor easement appurtenants.

Here, the easement, as stated supra, is one that runs with blackacre, and is not benefiting a particular person with a particular benefit.

License

A license is a privilege to enter another's land for a delineated purpose and need not be in writing. A license is freely revocable unless estoppel applies to bar revocation. Estoppel will only apply if the licensee has invested significant labor or money in reasonable reliance on the continuation of the license.

Oscar and Adam did not discuss whether Adam had a right to use the driveway, instead the use of the property arose primarily through unspoken conduct. Charles may argue that "oh, I won't get in your way" was a license to Adam continue using the driveway, but this is not a direct privilege with a delineated purpose, rather it is a response to a misrepresentation.

Thus, a license does not apply.

Profit Aprendre

A right or privilege to enter onto another's land to take something from the soil or product of the soil. A PA typically comes with an easement because the individual will need a way to ingress and egress.

TYPE OF EASEMENT

Necessity

Occurs when there is a common owner and division. An easement by necessity arises when a landlocked property does not have access to a public road after division from a common owner. If the property lacks legal access (strict necessity) or if the access is impractical (reasonable necessity) then the court may grant an easement. If the court does grant an easement the scope will typically be judicially determined and will extend so far to resolve the necessity.

Here, Oscar did own the two adjoining parcels-- Blackacre and Whiteacre-- and there was a division. Whiteacre then lacked reasonable access to a viable road, being that Eaton road is not maintained and in extremely poor condition for many years. However, Adam is not a party in the suit, and whiteacre and blackacre were not subsequently divided by a common owner. Instead, Charles and Betty both purchased Whiteacre and Blackacre respectively. — *(Common owner ended when Oscar sold, 2002? Access was so poor not to even reasonably call B+W.)*

Thus, an easement by necessity will most likely not apply.

Easement by Implied Prior Use

Occurs when there is a common owner and division. An easement by implied prior use occurs when a single parcel of land is divided by a common owner and the dominant estate continues to cut through and use a path that cuts through the grantees property-- the servient estate. An easement by implied prior use may be granted when the use was continuous and apparent (inquiry notice, requires someone to inquire about the road if the use is apparent), the use was reasonably necessary for the dominant estate, and it was the intent of the dominant estate to continue to use the property. The scope would extend to whatever the prior use may have been.

Here, this type of easement typically occurs when the grantee is the one that purchased the property that had been split, and the grantor is the one who would continue to use the path that they had been previously using. Nevertheless, there was no discussions between Oscar and Adam about the right to use the driveway, rather Adam merely continued to use the path that had been established. The use was reasonably necessary, being that Eaton road was in extremely poor condition, most likely riddled with potholes and hazards, and in the very same year that Adam had purchased the property, he continued to use the driveway across blackacre to build his house, showing an intent to use the the road that has existed.

Yet, the rights are pertinent to Charles and Betty. As stated with necessity, the property was not split by one individual owner, but instead, the Oscar sold Blackacre to Betty and Adam sold to Charles. The two estates have already been established as two separate estates owned by two separate owners and subsequent owners.

Thus, the court will most likely not grant an easement by implied prior use.

Prescriptive Easement

An easement by implied prior use gives one a right to use another's property without permission provided that certain conditions are met. A prescriptive easement may arise by use, misuse, or overuse.

Actual Use

The user must be actually using the property as a true owner would. This puts the true owner on notice that someone is using their property.

Here, Adam began using the driveway in 2000 to build his home. The driveway was for construction purposes. If a true owner were to buy a parcel of land and want to build a new home, they may be actually using the driveway that exists. The court tends to reward those who are using their property, and therefore, want to see a parcel of land developed for some purpose, rather than remain fallow and unused. However, Betty may attempt to claim that a true owner would not use a driveway across another's land, to get to their property. Nevertheless, Adam's construction was completed in 2001, and he laid gravel over the length of the driveway, and began using the driveway to access his land, as a true reasonable owner would until he sold the property in 2023.

Thus, actual use has been met.

Open and Notorious

Use must be so visible and apparent that if a reasonable owner were to come and inspect their land they would be on notice that someone was using the land.

Here, Adam began construction in 2000, this typically indicates that the use was clearly visible to all owners, especially Oscar who may merely had to look outside his window to notice that construction vehicles--tractors, dump trucks, and worker vehicles-- were coming and going. The facts suggest that the work was completed in a year, therefore, it may be plausible that Charles even had to move aside as the construction vehicles needed a way to ingress or egress. Further, following the construction of the home, Adam continued to use the driveway for access to his home. This suggests that there was a daily coming and going, as many work, even if not a daily occurrence, Adam's coming and going was most most likely quite apparent. Adam also laid gravel over the length of the driveway on Blackacre clearly asserting to Oscar that someone, in this case Adam, is using the property.

Hostile

Use of the property must violate the lawful possessor's interest in the property. If the use is with permission, then the usage is not hostile. Some jurisdictions require that the user believe in good faith that they have a right to the property.

Here, there were no discussions between Adam and Oscar on whether or not Adam may use the property. Instead, Adam, without the express consent of Charles, began asserting a claim against the property by continuously driving over it and going so far as to lay gravel, establishing a well-paved and well-maintained driveway to access whiteacre. However, Betty may claim that upon purchase of the property, Adam approached Betty and claimed that he had an easement, which was a statement of misrepresentation. Nevertheless, Betty responded with, "oh, well then I won't get in your way." Betty may claim that this was permission, and thus halted the hostile element of the easement.

Charles may then argue this was not a granting of permission, but a mere gesture of benevolence recognizing the preexistence of an easement.

Thus, if the courts agree with Charles, the element of hostility may be met.

Continuous

The claim against the property must meet the statutory period.

Here, the statute of limitations in this jurisdiction was for 20 years. Charles will most likely argue that Adam's usage began in 2000 and therefore was met in 2020. If Betty contends that the usage did not start until 2001, upon completion of the house, then the time period was met in 2021. However, if Betty further argues that her statement to Adam was a granting of permission, then the time period was not met, and the time stopped in 2018, two years short of the statutory requirement. Nevertheless, the court's will likely agree that this was not a granting of permission, especially being that Betty was on inquiry notice.

Therefore, when Charles acquired the property, the time period had been met in 2020, and the easement had been established.

Tacking

The time must be continuous. If the usage stops, time restarts. However, if one party sells to another, and they are in privity, then the time never stopped.

Here, Adam and Charles are in privity and the time continued, but this irrelevant because the easement had already been established in 2020.

Scope

The scope would extend to what gave rise to the easement, and in this case, this is the driveway.

Express Easement

An express easement must be in writing and identify the grantor and grantee, the easement, its use, and location. An express easement is subject to the statute of frauds and thus needs to be in writing. The deed must be recorded to put others on notice that the property is subject to an encumbrance i.e. the easement.

Here, there are no facts to indicate that Oscar and Adam had an express easement as between each-other. Further, the statement "oh, well then I won't get in your way," is not enough to constitute an express easement as there is no meeting of the minds, no words of specificity, and lastly, was not in writing.

Thus, an express easement would not apply.

Easement by Estoppel

An easement by estoppel applies when one party was given permission to cross the servient estate which resulted in detrimental reliance to the dominant estate, the user of the easement. The scope would extend so far to avoid injustice if the permission was revoked by the servient estate.

Here, though no permission was expressly granted, Charles may argue that he began building two more homes on Whiteacre. Betty soon became privy, though the facts do not indicate how soon after the sale or construction, and then decided to place a fence across the driveway. Again, though the facts do not indicate, Charles most likely expended money and labor in the reliance on the continuation of the easement, but as stated, there was no permission to use the driveway, and therefore Charles was merely continuing to use the road that already existed, which, as stated above, had already been established as a prescriptive easement.

Thus, easement by estoppel would not apply.

Termination

Termination of an easement may occur through unfairness ending, release, abandonment, prescription, estoppel, misuse, expiration, necessity ends, if conveyed to a bona fide purchaser without notice, condemnation, extinguishment by merger.

Prescription

The same elements as a prescriptive easement apply to a prescriptive termination.

Here, the statutory period for prescriptive easements is 20 years, and Betty just erected a fence after the construction of the two new homes on whiteacre.

Thus, prescription would not apply.

If conveyed to a bona fide purchaser

Here, Betty may argue that the easement had been terminated as she was the new owner. However, Betty and Oscar did not discuss Adam's right to use the driveway and Betty facially accepted the assertion by Adam that the easement had already existed. Betty was on inquiry notice, being that the use was already visible and she had a duty to inquire, and constructive notice, to inspect whether or not the easement did in fact exist. Charles did not start using the property until 2023, therefore Betty had 5 years to determine whether or not the easement existed. Despite this, Betty waited too long and a prescriptive easement had been created.

CONCLUSION

The court will likely find that a prescriptive easement had been established in 2020, and Charles had a right to the driveway that crossed Blackacre.

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2)

CO-TENANCY

There are three types of co-tenancy: joint tenancy, tenancy in common and tenancy in the entirety.

JOINT TENANCY

Joint tenancy must be expressly stated in the deed. It provides for equal ownership of the property with a right of survivorship. Right of Survivorship means that if a co-tenant dies, the ownership is absorbed by the other joint tenant. However, ownership can be transferred during a tenant's life. Any effort on the part of a joint tenant to give his ownership in the property through his will is invalid.

Joint tenancy requires the four unities of interest. The interests are title, time, interest and possession. All four elements must exist at the same time, otherwise a severance of the joint tenancy will occur.

Here, in 2016 Harold, Wanda, and David are joint tenants of Blackacre, because the facts specify as much. The four unities are all simultaneously satisfied because they took title at the same time, with the same right to possession and same type of interest in the property.

Note that Harold's 2020 deed stating he transferred his interest to himself as a joint tenant was invalid. This is because the four unities did not exist simultaneously between David, Harold and Wanda. ✓

TENANCY IN COMMON

Tenancy in common is the default type of co-tenancy. The co-tenants take ownership, usually divided equally such as 50/50 or 33/33/33; however, percentages can be specified

explicitly. The main distinction from joint tenancy is that tenancy in common does not have a right of survivorship. This means that a co-tenant's ownership share can be transferred during life or devised in a will.

SEVERANCE

Severance of a joint tenancy can occur by transfer (to self or other), contract to sell, agreement or statutory grounds such as divorce. When a severance occurs, the joint tenancy becomes a tenancy in common. A transfer to other can occur through a mortgage depending on the jurisdiction. In a lien theory jurisdiction, a co-owner who takes out a mortgage on his interest does not transfer ownership and the tenancy remains a joint tenancy. In contrast, in a title theory jurisdiction, when a co-owner takes out a mortgage on his interest, a severance occurs creating a tenancy in common with the other co-tenants.

Here, the status of the co-tenancy of Wanda, Harold and David hangs on whether their jurisdiction is a lien theory or title theory. Under a lien theory, David's 2017 mortgage does not sever their joint tenancy. However, under a title theory, David becomes tenants in common with Wanda and Harold, who remain joint tenants between themselves.

In 2018, Harold deeds his interest to himself as a "tenant in common". At this point, there are two possibilities of what the co-tenancy looks like. Option A, Harold has a co-tenancy with Wanda and David, who remain joint tenants if we follow the lien theory. Option B, Harold, Wanda and David are all tenants in common with each following the title theory. ✓

ED'S OWNERSHIP

Under a joint tenancy, an ownership interest cannot be transferred via a will. Under a tenancy in common it can.

Here, if we follow the lien theory, David's mortgage did not sever the joint tenancy between himself and Wanda. Thus, at David's death, David and Wanda were joint tenants with a tenancy in common with Harold. Because the joint tenancy was intact, at death, David's interest "disappeared" and Wanda became ⁶⁶50% owner of Blackacre with Harold owning the other ³³50%. In this scenario, David's transfer via will to Ed was invalid.

However, if we go back and state that David's mortgage severed the original joint tenancy, making David a tenant in common with Harold and Wanda who remained joint tenants, then David, as a tenant in common, may transfer his interest to Ed via his will.

*no
in 2018 Harold
became a
Tenant in
Common*

ACCOUNTING

A co-tenant may ask for an accounting at any time. An accounting can occur as an independent action or as part of a partition. An accounting is a balancing of expenditures of the parties. Note, that in a partition of a joint tenancy, an accounting is not allowed because the partition will be 50/50 regardless of who paid for what.

CONTRIBUTIONS

Contributions are any carrying costs (taxes and mortgage payments), necessary expenses or necessary repairs. Parties are responsible for their pro rata share.

Here, assuming that Harold, Wanda and Ed ended up as tenants in common, each with a 33% ownership, they will need to ensure that each is 33% responsible for the initial roofing, which is generally a necessary expense to prevent deterioration. Wanda will end up owing money for the initial roofing because she did not contribute. There is an argument to be made that the second re-roofing was not necessary. If that argument succeeds, the Ed and Wanda will not be responsible for that cost.

IMPROVEMENTS

Co-tenants are not automatically entitled to reimbursement for improvements.

Improvements are non-necessary changes to the property. If the improvement increases the value of the property, the tenant who paid for the improvement is given the value of the improvement.

Here, David installed a front lawn fountain for \$15,000. Harold and Wanda refused to pay for the fountain. If the fountain increased the property value, Ed as the beneficiary of David, can claim the amount of increase. But there is no guarantee that he will receive the \$15,000 it cost.

PARTITION

Any party can seek a partition of the property. A partition is the division of the property. It can be done by forcing a sale and dividing the proceeds based on percentage ownership, or it can be done "in kind", which is a physical division of the property. Historically, courts have preferred an "in kind" division, but it can be difficult depending on the type of property. Modernly, courts prefer to force a sale of the property and divide the proceeds based on the percentage ownership.

Here, Blackacre is a small parcel zoned only for single-family, and it already has a single-family home on it. "In kind" division would not work. Therefore, the court will likely force the sale and divide the proceeds.

If we follow Option A, David's mortgage did not sever, David and Wanda remained joint tenants in a tenancy in common with Harold, then at the time of David's death, Wanda absorbed David's ownership and received 50% ownership of Blackacre. Here, the sale will divide the proceeds 50/50 between Wanda and Harold with previous necessary expenditures taken into consideration.

If we follow Option B, where David's mortgage did sever the joint tenancy between the three, Harold severed the remaining joint tenancy with Wanda, and they all ended up as

33% owners of Blackacre, with Ed inheriting David's share, then the court will divide the proceeds as 33% to Wanda, Harold and Ed with previous expenditures taken into necessary consideration.

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3)

Alex's Rights and Remedies

Nuisance

A nuisance is a substantial and unreasonable interference with another's quiet and enjoyment. A nuisance may be a public nuisance, which is an interference with the safety, comfort, and convenience of the general public at large and must be brought upon by a public official, and only by a private individual that suffers unique harm. Or a nuisance may be private which is a substantial and unreasonable interference with one's use and enjoyment of their private property. A nuisance may be either intentional and unreasonable or unintentional but causes harm by recklessness or negligence.

The act of Alex placing the 80 ft tower 20 ft from Chris' home is a private nuisance that does not affect the public at large.

Substantial

A nuisance is substantial if it is more than a mere annoyance, and is offensive to an average and reasonable member of the community.

Due to Alex's medical device requiring power 24 hours a day he build an 80 ft wind turbine, 20 ft away from the shared property line with Chris. The turbine caused a humming sound which bothered Chris, as well as caused Chris anxiety due to him feeling electromagnetic energy. Alex also attached flashing lights to the tower visible from Chris property every night. The humming projecting from the tower may be seen as a slight annoyance. Cars drive by single family homes daily, which produce constant noise, and the average person is not offended by such. The humming would most likely not be found to be substantial. The flashing lights every night would be more than a mere annoyance to an average member of the community.

electromagnetic harm?

size of properties
size of turbine

is noise constant?
location relative to
homes

Conclusion: The humming is not substantial while the flashing lights will most likely be found to be substantial.

Unreasonable

A nuisance is determined to be reasonable or unreasonable by weigh of balancing the harm caused with the utility of the conduct. If the utility of the conduct outweighs the harm caused, then the nuisance is not unreasonable.

The tower is used to power a medical device used by Alex 24 hours a day. This infers that the medical devise is used to treat a severe medical condition. The benefit of keeping the tower up to keep Alex alive may outweigh the harm it causes. However, there is other ways to power a medical device, and the extra cost for Alex to spend on electricity is not a burden that outweighs the harm caused by the flashing lights and 80 ft unsightly tower. Alex may be able to install solar panels to power his medical device. However, the humming produced by the tower does not cause unreasonable harm. Besides cars driving by outside there are also dogs barking, and people walking and talking. The sound from Chris tv may even be louder than the humming he hears in his home.

Conclusion: The 80 ft tower that has attaching flashing lights will most likely be found to be unreasonable. However, if the lights are taken down the humming alone is not.

Interference

is sign a nuisance w/out the lights

An interference is caused by nuisance when the conduct trespasses onto the P's property and interferes with their use and enjoyment of their own property.

The humming and lights transfer to Chris property which constitutes an interference. While the humming is not a substantial and unreasonable interference, the flashing lights at night are a substantial interference with Chris' sleep. This may keep him up at night and interfere with his performance at work amongst other things.

Conclusion: The lights are an interference with Chris' quiet enjoyment of his home.

Defenses

Defenses to nuisance include: abnormally sensitive Plaintiffs, coming to the nuisance (where one is aware of the nuisance before hand), and compliance with regulations and ordinances.

Alex may argue that Chris is an abnormally sensitive Plaintiff. Alex states that he can feel electromagnetic energy coming from the turbine and this makes him anxious. The average person would not feel electromagnetic energy coming from the turbine nor would the light humming coming from the tower cause more than a slight annoyance.

Remedies

Remedies for nuisance include an injunction, which orders the D to stop the nuisance, or can include monetary damages for past and future harm caused by D's conduct. If a D is unable to stop the nuisance because the burden to do so would weigh so heavily, then they may make a one time compensation to the P to continue the harm. If a D's conduct is not found to be unreasonable, a P may offer to pay for D to relocate to stop the nuisance. If there are more than one nuisance, a mix of injunctions and monetary damages may be issued as remedies.

In retaliation Chris placed dozens of fake videos cameras facing BA. These videos align directly facing Alex's home window. Alex may seek an permanent injunction to have the cameras taken down.

Conclusion: Alex may have a right to keep the tower up if he takes down the lights. Alex may have a right to seek a permanent injunction to have the camera's Chris placed taken down.

Chris' Rights and Remedies

Nuisance

A nuisance is a substantial and unreasonable interference with another's quiet and enjoyment. A nuisance may be a public nuisance, which is an interference with the safety, comfort, and convenience of the general public at large and must be brought upon by a public official, and only by a private individual that suffers unique harm. Or a nuisance may be private which is a substantial and unreasonable interference with one's use and enjoyment of their private property. A nuisance may be either intentional and unreasonable or unintentional but causes harm by recklessness or negligence.

The act of Chris placing dozen's of cameras facing Alexs' home is a private nuisance that does not affect the public at large.

Substantial

A nuisance is substantial if it is more than a mere annoyance, and is offensive to an average and reasonable member of the community.

Alex placed dozens of cameras facing Chris' home which he can see directly from his window. This is more than an slight annoyance and the average person would be substantially offended by such conduct. Cameras will stop Alex from being able to peacefully walk around his home, eat, and even change his clothes. *very*

Unreasonable

A nuisance is determined to be reasonable or unreasonable by weigh of balancing the harm caused with the utility of the conduct. If the utility of the conduct outweighs the harm caused, then the nuisance is not unreasonable.

how do you know this?

The harm that is caused by the cameras substantially outweighs any utility, because one does not exist. The cameras were placed solely for retaliation. The harm caused to Alex is substantial in that it prohibits him from being able to freely enjoy the privacy of his own home. The belief that his actions are being recorded around the clock by Chris may even stop Alex from returning to his home at all.

Interference

An interference is caused by nuisance when the conduct trespasses onto the P's property and interferes with their use and enjoyment of their own property.

The cameras substantially interfere with Alex's day to day life. Even though they are fake, it appears to Alex that they are video taping everything happening in Alex's home, this is a trespass into his personal privacy and home.

Defenses

Defenses to nuisance include: abnormally sensitive Plaintiffs, coming to the nuisance (where one is aware of the nuisance before hand), and compliance with regulations and ordinances.

There are no defenses to Chris placing of the dozen camera's. Chris may argue that it is legal to place camera's outside of one's home, however conduct does not need to be illegal in order to be a nuisance.

Remedies

Remedies for nuisance include an injunction, which orders the D to stop the nuisance, or can include monetary damages for past and future harm caused by D's conduct. If a D is unable to stop the nuisance because the burden to do so would weigh so heavily, then they may make a one time compensation to the P to continue the harm. If a D's conduct

is not found to be unreasonable, a P may offer to pay for D to relocate to stop the nuisance. If there are more than one nuisance, a mix of injunctions and monetary damages may be issued as remedies.

Alex may seek an immediate and permanent injunction to have the cameras taken down.

Conclusion: Chris may have a right to seek an injunction as a remedy for the tower because of the height and proximity to his property.

END OF EXAM

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