

MONTEREY COLLEGE OF LAW

TORTS

MIDTERM EXAM

FALL SEMESTER, 2025

Professor J. Martin

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

TORTS MIDTERM EXAM-- FALL, 2025

QUESTION ONE

DON is a talented chef who prepares foods from exotic cultures. He obtains financial backing and opens a restaurant in Carmel. The advertising for DON's new restaurant states that it specializes in "game meats" (such as elk, kangaroo, venison, and ostrich) as well as "exotic" sauces. PETE sees that advertising and makes reservations for dinner.

Unknown to his customers, DON obtains live cats from the Monterey Animal Shelter, then prepares and serves them as roast rabbit on a bed of rice with an exotic sauce. DON's restaurant is extremely clean, the rabbit dinner is healthy, and all customers agree that it is delicious. The menu does not inform that the "rabbit" dinner is a cat but it does say, "substitutions may be made by the kitchen".

PETE attends DON's restaurant, orders the "rabbit" meal, and begins to devour the delicious dish. At the table next to PETE, another customer is served the same meal but instantly recognizes its actual nature. The customer at the table next to PETE stands and shouts, "This is not a roast rabbit! This is a cat!"

PETE loves cats and he immediately feels deep revulsion. He leaves his table, intending to depart DON's restaurant without paying. At the door, DON meets PETE and stands near PETE, also blocking the exit. DON holds a large, sharp knife as well as PETE's coat. DON waives the knife and says, "You're not going anywhere or getting your coat until you pay, you thief!" PETE stands motionless, fearing that DON may attack him. Less than a minute later, PETE feels ill and vomits the contents of his stomach, which includes some undigested cat meat. Some of PETE's vomit soils his own coat.

DISCUSS: PETE vs. DON in

- A. Battery
- B. Assault
- C. False Imprisonment
- D. Trespass to Chattels
- E. Intentional Infliction of Emotional Distress

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TORTS MIDTERM EXAM

FALL, 2025

QUESTION TWO

DOUG owns a cleaning business in the town of Carmel and he advertises in the Carmel newspaper about "professional cleaning services for local merchants". PAM is the owner of a Carmel art gallery and, after seeing his advertisement, she places a phone call to DOUG asking for weekly cleaning services of her art gallery. They agree on a price and PAM does not meet DOUG nor does she request any references. PAM mails DOUG a key to the art gallery and a check for two months services.

In order to clean for his clients, DOUG uses an alcohol-based liquid that is packaged in twenty-gallon metal drums. The heavy drums are usually moved by a metal cart on rubber wheels, equipped with a sturdy fabric belt that secures the container. Those professionally built carts cost \$200 but DOUG decides to make his own cart by fastening rubber wheels on an upside-down wooden chair. He does not equip his homemade cart with any sort of belt to secure the metal drum. His homemade cart was built for only \$25.

One night, DOUG enters PAM's art gallery for after-hours cleaning and he brings with him a full twenty-gallon drum containing the alcohol-based liquid. The drum is not secured by a belt and it rolls off the homemade cart and spills all of its contents. The liquid seeps through the floor and into the basement of the gallery. No immediate harm is caused to the paintings in PAM's gallery but, later that night, rats in the basement drink some of the liquid.

The rats become intoxicated, then climb out of the basement and into the gallery where they drunkenly chew on several of PAM's valuable paintings. Every art expert consulted states that \$500,000 worth of art was completely destroyed. PAM comes to your office and asks that you assist her in suing DOUG.

DISCUSS: PAM vs. DOUG in Negligence

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TORTS MIDTERM EXAM

FALL, 2025

Prof. J. Martin

QUESTION THREE

In 2004, DAN obtains a permit from the County of Monterey to utilize a small cabin beyond any city limits as a clubhouse for a "Man's Club". That property provides a meeting place for men who want to celebrate their gender and the monthly meetings involve drinking alcohol, chanting while playing drums, and a meal called "Feast on the Beast" whereby whole animals are killed, skinned, and cooked over an open barbecue.

The animals are healthy when delivered to the Man's Club, but they are sprayed with Toxi-Bug, an insecticide while in a holding pen. Prior to cooking, the animals (such as lambs, pigs, and small cattle) are killed and skinned by club members who have experience as butchers. Some of the extra cooked meat is delivered to the local homeless shelter.

During the following years, the County of Monterey grew in population and homes were built near the Man's Club operated by DAN. In 2024, PERCY purchased a home very near the Man's Club. PERCY does not eat meat and he belongs to a religion that believes life is sacred and no harm or distress should be imposed on sentient beings.

Soon after moving in, PERCY witnessed a monthly meeting of the Man's Club. He was distressed by the sounds of two animals kept in the holding pen, describing their sounds as "all night crying and howling". PERCY witnessed the slaughter of the animals being prepared for cooking and he was horrified. PERCY says that he was revolted by the smell of "burning flesh" over the barbecue and the sight of animal bones being thrown into waste bins. An expert has tested PERCY's property and traces of Toxi-Bug have been found there.

PERCY says the Man's Club has destroyed his feeling of comfort while at home and he believes he can no longer live near where the monthly meetings take place. PERCY comes to you for advice.

DISCUSS: PERCY vs. DAN in Nuisance.

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TORTS MIDTERM EXAM -- FALL, 2025

QUESTION ONE -- MODEL ANSWER

PETE vs. DON

- A. **BATTERY** -- An act, done with intent, that causes contact with the person of another, so that the touching is harmful or offensive, and done without consent or privilege.
1. The contact would be ingesting cat meat by PETE, certainly an offensive touching because he "loves cats" and feels "deep revulsion" when he knows the true nature of the food. Battery can be created by an indirect touching.
 - a. Most members of the Monterey/Carmel culture would feel that being deceived to eat cat meat is offensive as cats are domesticated animals kept as pets.
 2. The intent is present because DON knowingly obtains live cats, cooks them, and portrays them as rabbits to his customers. DON's state of mind seems to be that he wants to deceive his customers.
 3. DON may offer a defense of consent because his restaurant specializes in "game meats" and the menu states that "substitutions may be made".
 - a. True consent may not exist because one's physical integrity is highly protected and what is served to a customer should be described with honesty. The Monterey/Carmel culture respects the dietary desires and restrictions of others.
- B. **ASSAULT** -- An act, done with intent, that creates the apprehension of imminent contact that is harmful or offensive, and done without consent or privilege.
1. PETE's apprehension is likely present when he is confronted by DON at the restaurant exit. DON wields a large, sharp knife and seems both angry and threatening, calling PETE a "thief".
 - a. Because DON stands near PETE, there is the possibility of imminent harmful contact. DON seems to have the present ability to carry out his threat.
 2. DON's intent can be seen through his intense language and the handling of a weapon. Even if DON does not intend to make harmful contact with PETE, his recklessness would likely cause apprehension.
 3. DON may argue that PETE's attempt to leave without paying is the initiation of the confrontation.
 - a. It would be doubtful that leaving under the conditions described would warrant insulting and threatening words, let alone the brandishing of a weapon. The Shopkeepers Privilege does not allow an assault.
- C. **FALSE IMPRISONMENT** -- An act, done with intent, which creates the containment of another within fixed boundaries, for an appreciable amount of time, without consent or privilege.

1. PETE is confronted by DON at the door of the restaurant and DON's position blocks the exit. It appears that PETE is contained within fixed boundaries, namely the walls of the restaurant.
2. PETE stands "motionless" but the facts state it is for only "less than a minute". A brief imprisonment may have taken place, especially as there is no mention of an alternate means of escape. Also PETE is aware of his confinement.
 - a. Whether the brief containment is sufficient to create the tort depends on whether that amount of time is appreciable.
3. DON may again argue that he was utilizing the Shopkeepers Privilege, a privilege that allows the detention of a customer to protect a business.
 - a. The issue is whether DON threatened too much force. The brandishing of a large knife, together with threatening language, may have abused the privilege.

D. **TRESPASS TO CHATTELS** -- An act, done with intent that intermeddles with the chattels of another so as to harm a marketable interest, and done without consent or privilege.

1. The facts relate that DON attempts to hold PETE's coat until he pays and those facts show an interference/intermeddling with PETE's coat.
 - a. The harming of the chattel occurred when PETE vomited on his own coat. While PETE seems to have harmed his own property, it could be offered that PETE would not have been sick had he not been served a meal that made him feel ill, then confronted by DON.

E. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS** -- An act, done with intent, that amounts to extreme and outrageous behavior, causing severe emotional distress, and done without consent or privilege.

1. It may be argued that serving a cat to a restaurant customer, instead of rabbit, is extreme and outrageous. Cats are pets and not eaten in our culture. However, several cultures do eat cats and the facts state that DON's restaurant is "extremely clean" and the meal is "healthy". DON would argue that there is nothing outrageous about eating cat.
2. DON may also argue that PETE's reaction is not "severe". Merely feeling sick, then vomiting, is not a particularly rare event as those circumstances happen to many people. There is no description of lasting harm.
3. DON may also argue that he had no intent to cause distress. He is a "talented chef" with experience in preparing "exotic" foods. DON may argue that PETE's reaction results from extra-sensitivity and is not something an ordinary person would have.
 - a. PETE would argue that DON's intent need not be specific about the result and that intent to cause emotional distress could come from recklessness.
4. DON may also argue that PETE's attendance at a restaurant specializing in "game meats" and "exotic" sauces was a form of consent to eat an exotic dinner.

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TORTS MIDTERM EXAM -- FALL 2025

QUESTION TWO -- MODEL ANSWER

PAM vs. DOUG in Negligence

1. When DOUG spilled an alcohol-based liquid in PAM's gallery, his behavior may have breached duties owed to PAM and DOUG may be liable to her in Negligence.
 - A. Negligence is defined by the elements of Duty, Breach, Causation, and Damages.
 - (1) The damages are stated to be the destruction of art valued at \$500,000.
2. Did DOUG owe PAT a Duty?
 - A. A duty to avoid harm to PAM's property may exist through Contract. The facts state that PAM mails a key to the art gallery and it can be presumed that she hires him for a fee. Because of an employment contract, it is likely that DOUG is obligated to conduct his business in the manner of a reasonably prudent cleaner and to act in ways that do not harm PAM or her property.
 - (1) DOUG's advertising could also be construed as a promise to provide professional services in a professional manner.
 - B. A duty to avoid harm to PAM's property may exist through a Special Relationship.
 - (1) The general rule is that one does not have a duty to protect another from 3rd parties, absent a special relationship.
 - a. Because PAM has hired DOUG, he may have a duty to avoid exposing PAM or her property to additional risks. Just as DOUG would have a duty not to leave the property unlocked so thieves could enter, DOUG would have a duty not to increase the risk of harm from 3rd parties (animals) by leaving materials that would attract animals.
3. Was a duty of care Breached by DOUG?
 - A. A reasonably prudent cleaner would transport materials in a manner that was safe. A reasonably prudent cleaner would have a cart that would minimize the risk of harm from spilled materials.
 - B. The burden of owning a cart that was sufficient to move a twenty-gallon metal drum was only \$200. and that is not an extravagant sum. DOUG improvised with a homemade model and while saving \$175., he exposed PAM and her property to an increased risk of harm.
 - (1) The Hand Formula would state that the additional burden of only \$175. would have minimized or abated the risk of harm. The gravity of harm, multiplied by the likelihood of harm would have been significant, given the value of PAM's art and the likelihood of an accident because of the nature of the homemade device.
4. Did DOUG's breach of a duty Cause PAM's harm?
 - A. Actual Causation: It can be argued that but for DOUG's failure to safely move the cleaning materials, the rats would not have gone on a drunken chewing spree.

They were likely in the basement before the accident and had caused no previous harm. If the but for test does not apply, it can be argued that the spilling of the alcohol-based liquid was a substantial factor in getting the rats drunk, in that the risk was greatly increased

- B. Proximate Causation: The circumstances involving drunken rats describe not only an unlikely manner of harm but also an unlikely type of harm. One might expect property damage because of the spill of alcohol-based liquid, but the expected harms would be stains, or a resulting fire, but not gnawing by rats.
- (1) The facts describe harm that is not immediate but rather delayed by some time when the rats became drunk.
 - (2) The facts describe harm that is not direct but rather brought about by third parties or independent forces.
 - (3) If a "direct" test is used, there would be no liability because the harm is indirect, as discussed above. If a "foreseeable" test is used, there might not be liability because the harm is from an unexpected force. Likewise, the harm was delayed rather than being immediate.
 - a. On the other hand, PAM may argue that one need only foresee a loss from DOUG's negligence, and not the exact type and quantity of harm. If a foreseeability test can be applied in that light, PAM may have a better chance of recovery.
5. Was PAM Contributorily Negligent?
- A. The facts state that PAM did not meet DOUG when she could have evaluated him and his equipment.
- (1) It may be argued that PAM owed a duty to herself to inspect DOUG's competency, instead of just mailing him a key.
6. Conclusion: While the facts state an unlikely manner of harm, DOUG clearly breached a duty owed to PAM and, if a causation test can link his negligent behavior with PAM's loss, DOUG will be liable.

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TORTS MIDTERM EXAM -- FALL, 2025

QUESTION THREE -- MODEL ANSWER

PERCY vs. DAN in Nuisance

PERCY contends that the sights, sounds, smells, and possibly a dangerous insecticide from DAN's Man's Club have entered his property and deprived him of the use and enjoyment of his land. As Nuisance protects against the nontrespassory invasions of another's property, PERCY may utilize that cause of action.

Per Restatement 2nd, liability for Nuisance has two main requirements. First, the invasions must be substantial, meaning they must be more than trifling or insignificant. Second the invasions must be unreasonable. Both requirements must be present for the invasions to be unjustified.

Are the invasions of sights, sounds, smells, and Toxi-Bug "substantial"?

The sights, sounds, and smells of animals are things that would be ordinarily associated with a rural cabin (in 2004 it was "beyond any city limits"). It is common for dogs and cats to cry and howl, and animals such as lambs, pigs, and cattle would also be expected to make noise. The Man's Club meetings are only held every month, however, so the sounds & smells of animals held in a pen would be intermittent.

The sight of animals being slaughtered may have been traumatic for PERCY but a "sight" (or view/spectacle) may not qualify as an invasion of land.

The smell of barbecue (prepared by a butcher) is a more substantial invasion but most people perceive barbecues as a pleasant smell and the harm of a Nuisance must be felt by a normal, reasonable person. If PERCY is "revolted" by meat being cooked, that may be a sensitivity particular to him and therefore not substantial.

The presence of Toxi-Bug on PERCY's land might be a substantial invasion if it can be shown to be harmful to humans.

Are the sights, sounds, smells, and Toxi-Bug "unreasonable" invasions of PERCY's land?

The test for unreasonableness is to ask whether the gravity of harm outweighs the utility of conduct. Gravity can be decided by the extent, character, suitability and social value of the invasion. Here, DAN established a place that provides a social service to men and he was given a permit in 2004 to hold meetings at the clubhouse. The suitability of that enterprise was appropriate for the location when it was established in 2004 and it was PERCY who "came to the Nuisance" in 2024, decades later, when he purchased a home "very near" the Man's Club.

The presence of Toxi-Bug may be an unreasonable invasion if PERCY can show that a dangerous poison invaded his land. The gravity would be significant if it could be shown that PERCY has or might be injured. While the insecticide would have a utility (killing bugs) that utility may not outweigh the danger to PERCY and a "coming to the Nuisance" defense would not apply.

In conclusion, PERCY may succeed solely on the Man's Club use of Toxi-Bug.

1)

PETE Vs DON

ORIGINAL QUESTION - 10/10
SMT. of LAW - 9/10
WRITING & ANALYSIS - 9/10

* 1. **Battery** - PETE will contend that because DON served him cat meat disguised as rabbit meat, that it constituted harmful or offensive contact. Thus battery is the appropriate action.

1. Act and Intent -- DON's act was volitional and intentional because he publicly advertises that his restaurant serves "game meat" but instead uses cat meat. DON being a talented chef with previous experience serving foods from exotic cultures should be able to tell the difference between rabbit and cat meat.
2. Causation -- There are no causation issues. DON is both the actual and proximate cause of PETE ingesting the cat meat.
3. Infliction of harmful or offensive contact -- PETE is described as a "cat lover" who went to DON's restaurant because he believed DON served "game meat", but was instead served cat meat, and immediately felt revulsion after being made aware. A reasonable person also would consider being served substituted meat outside the category of the prospective meat as being offensive. There also isn't any doubt wheater contact was made because PETE ingested the meal.
4. Without consent or privilege -- There are no consent or privilege issues. DON did not have consent or privilege to make offensive contact with PETE
5. Defenses -- DON may argue that him placing verbiage that "substitutions may be made by the kitchen" excuses him for using cat meat in substitute of rabbit. This may fail due to it still being considered harmful or offensive if objectively viewed by a reasonably prudent person.
6. Conclusion -- PETE will likely be successful in a battery suit.

2. **Assault** -- PETE will contend that because DON swung a knife at him, that he had apprehension of harmful or offensive contact. Thus making assault an appropriate action.

1. Act and Intent -- DON's act of waving the knife at PETE was volitional and intentional because he ^{H.A.D} intentions ^F on keeping PETE from exiting the restaurant and used the knife to do so.

2. Causing -- There are no causation issues. DON is the actual and proximate cause of PETE's apprehension of harmful or offensive contact by swinging the knife.

3. Apprehension of imminent harmful or offensive contact -- DON swung a large, sharp knife while PETE was attempting to exit the door. Contact with a knife is and would be harmful. PETE proves his apprehension by PETE standing still in fear that he may be attacked. While fear is not a component of apprehension ⁺ it can be used to show that apprehension was present.

4. Without consent or privilege - DON may argue shopkeepers privilege, and that he was preventing PETE from leaving the restaurant without paying. This may fail due to DON's use of excessive force through use of a knife ^{★ ABUSE of THE PRIV.}

5. Conclusion -- PETE is likely to win a suit for assault.

3. **False imprisonment** -- PETE may contend that when DON held and swung the knife, while blocking the door that it confined him unlawfully to a bound area. Making false imprisonment an appropriate action.

1. Act and Intent -- DON volitionally blocked the exit out of the restaurant because he intended to stop PETE from leaving the restaurant.

2. Causation -- There are no causation issues. DON holding/swinging the knife, telling PETE that he "wasn't going anywhere" and blocking the exit is the actual and proximate cause of PETE being confined to a bounded area.

3. Confinement in a bounded area without means of reasonable escape -- PETE was attempting to leave the restaurant that DON owned. Assuming an enclosed structure, DON blocking the door physically, and additionally

swinging the knife and causing PETE to stand motionless out of fear may suffice as confining PETE to a bounded area. Additionally, PETE had no reasonable means of escape because DON was blocking the exit with a weapon.

4. Without consent or privilege -- DON may argue shopkeepers privilege, and that he had a reasonable suspicion of PETE committing theft and had the right to detain him as a result. This may fail due to the excessive force of DON using a knife.

5. Conclusion -- PETE will likely win a suit for false imprisonment.

4. Trespass to chattels -- PETE may contend that when he vomited on his coat, in response to eating disguised cat meat from DON, that constituted an intermeddling with his chattels that materially affected it.

1. Act and Intent -- as stated above, DON's act of serving cat meat under the guise of "game meat" was both volitional in movement and intentional.

2. Causation -- There are some issues with causation. PETE became ill after an incident while trying to leave the restaurant. While actual cause may be proven, PETE might not have thrown up if not for the cat meat, but proximate cause may be harder to connect. PETE didn't immediately vomit after finding out about the discovery of cat meat. It is foreseeable that serving someone cat meat may make them vomit, but on to ones own clothing may be stretch. Additionally, PETE threw up on his own coat.

3. Intermeddling with the chattels of another causing effect to material value -- The soiling of ones coat is materially affecting ones chattels. At the least one has to pay to get it cleaned.

4. Without consent or privilege -- no defenses or privileges present.

5. Conclusion -- PETE's suit may fail due to lack of proximate cause and his personal actions causing the material decrease to his chattels.

5. Intentional Infliction of Emotional Distress (IIED)

YES! THE
FACTS POSE
A STRANGE
CAUSATION
ISSUE

1. Extreme or outrageous Act -- The act of replacing their rabbit meat with cat meat can be view as an extreme or outrageous act. Why?
2. Intent -- It was intentionally done by a talented chef with exotic meat experience, who advertised "game meats" to an affluent area, but instead served cat.
3. Causing -- If, emotional distress is found, it is the actual and proximate cause of DON's actions of disguising cat meat as rabbit meat.
4. Emotional distress -- PETE immediately experienced deep revulsion upon finding out that the meat was cat. Beyond revulsion, there are no facts to suggest he had any lasting emotional distress.
5. Without consent or privilege - no indication of any consent or privilege.
6. Conclusion -- Due to the facts not stating any lasting emotional distress or damage. PETE is likely to lose a IIED suit against DON.

2)

PAM vs DOUG in Negligence.

Negligence is ~~a~~ ^{THE} breach ~~from~~ ^{OF} a standard of care to protected plaintiffs from foreseeable harm causing damages. PAM argues that DOUGs use of homemade carts to transport twenty-gallon drums of alcohol based cleaner, and the subsequent spilling of said liquid constituted negligence. Thus, negligence is an appropriate suit.

1. Did DOUG OWE PAM A DUTY

1. Doug owed PAM the duty of conducting himself and his business as a reasonably prudent cleaning business, and protect pam from all foreseeable harms associated with it.

2. DID DOUG BREACH THAT DUTY

1. RPP Standard -- DOUG uses an alcohol based liquid that he carries in twenty gallon drums. To save money DOUG makes his own carts that are rubber wheels on an upside-down wooden chair without any belt or device to secure the metal drums during transport. DOUG failed to act as a RPP cleaning service by not taking reasonable precautions to avoid causing harm.

2. Learned Hand ($N=B < P \times L$) -- Using the learned hand formula, Negligence is present if the burden to ~~eliminate~~ ^{ELIMINATE} the risk of harm (\$200 for the industry standard metal carts minus the \$25 DOUG spends to build his own cart.(175)) is less than the probability of harm (High, being that DOUG's carts didn't have a way to secure the heavy metal drums) multiple by the prospective loss (damage to the art gallery). $175 < \text{high probability of loss times loss of valuable art}$. A breach is found using the hand formula.

3. Custom -- facts state it is common for these twenty gallon drums to be moved by a metal cart with rubber wheels, equipped with sturdy belt that secures the drums. DOUG's deviation from these customs alone can be viewed as a breach of duty.

4. Conclusion -- a breach can be found using the RPP standard, hand formula or using custom.

3. **DID DOUGS BREACH OF DUTY CAUSE PAMS DAMAGES**

1. Actual Causation:

1. But-For -- But- for DOUG not properly securing the metal drums, and subsequently spilling said drums, The rats would not have become intoxicated and drunkenly chewed on several of PAM's valuable paintings.
2. Substantial factor - DOUG's actions of spilling the alcohol based liquid can also be viewed a substantial factor as to why the rats drunkly chewed on the valuable paintings. ☆ ☆ ☆

2. Proximate Causation: -- There may be an issue with proximate causation. It may be deemed that the rats becoming drunk off the spilled liquid and drunkenly chewing on the paintings can be viewed so remote, unforeseen, and delayed as to break the chain of causation.

4. **DOES DOUG HAVE ANY DEFENSES**

1. Contributory Negligence -- DOUG may argue that PAM and the art gallery were contributory negligent because they created conditions where rats could not only survive but climb from the basement to the gallery to potentially damage valuable paintings.
 2. Comparative Negligence -- Comparative neg. barrs recovery based on plaintiffs percentage of fault. Here DOUG may argue that PAM shares a percentage of the blame for creating of conditions where vermin may be present, this is likely if found credible to reduce PAMs recovery moderately. ? RECOVERY IS PROPORTIONATE TO FAULT
5. **Conclusion** -- If proximate cause is established PAM is likely to recover on a claim of Negligence

ORGANIZATION - 10/10
SYN. OF LAW - 9/10
WRITING - 9/10
ANALYSIS - 9/10

3)

1. PERCY V DAN in Nuisance -- PERCY claims the Man's Club (DAN) is destroying his feelings of comfort while at home through unreasonable smells, sounds and sights. He pursues an action of Nuisance.

1. Private Nuisance -- Non-trespassory invasion causing substantial and unreasonable interference with the enjoyment or use of another's land.

1. Was the invasion non-trespassory?

1. Sounds of howling and crying -- sounds All night crying and howling are sounds that penetrate into PERCY's property and are considered non-trespassory
2. Sights of animal slaughter -- Witnessing the slaughter of animals is not considered non-trespassory, as PERCY can choose not to look in that direction, or take other reasonable methods to avoid.
3. Smell of burning flesh -- PERCY claims the smell of "burning flesh" which as an offensive smell can be considered non-trespassory
4. Sights of animal bones -- PERCY also claims he sees bones being thrown into waste bins, as stated above sights are not generally considered non-trespassory invasions..
5. TOXI-BUG -- Experts testing PERCY's property found TOXI-BUG, an insecticide used in the Man's Club activities. This is considered a non-trespassory invasion
6. Conclusion -- only the sounds of crying and howling, the smells associated with burning flesh, and the TOXI-BUG on his PERCY's property will be considered non-trespassory invasions.

2. Is the invasion substantial (Restatement 2nd)?

1. Howling and crying noises -- PERCY witnessed a monthly meeting where the sounds of two animals crying and howling disturbed him.

ONGOING

This may not be considered substantial for the fact that these meetings happen monthly, and are not a daily or even weekly activity .

2. Smell of burning flesh -- As stated above, these are monthly meetings, so the smell of burning flesh may be argued by DOUG as not be considered as ongoing and thus substantial. But PERCY may argue that the smell of burning flesh is so potent and off-putting on its own to cause a substantial inference with DOUGs enjoyment of his property.
3. TOXI- BUG -- Experts testing PERCY's property found traces of TOXI-BUG an insecticide used in the DOUGs practices. The presence of a chemical agent can be considered a substantial invasion.

3. Is the invasion unreasonable (Restatement 2nd)

1. Uncommon in community -- The practice of a mens only club isn't the most uncommon practice. It can be common for cities to have 3 or 4 "mens club" in its jurisdiction. The facts do not mention whether there are multiple clubs.
2. Locality -- DAN originally obtained a permit to be outside of any city limits, due to the growth of population homes were built close to DAN's operations. The activities of killing and skinning animals and grilling them over an open barbecue inappropriate for its location? Their conduct would not be considered inappropriate or outrageous for its location.

3. Gravity of harm vs Social utility -- The social utility of the Man's Club is to provide a meeting space for men who want to celebrate their gender, as well as providing extra cooked meat to the local homeless shelter. Contrasting with the gravity of harm, the sounds of howling and smell of burning flesh happens on a monthly basis.



Conjoined with the fact that Insecticide (Toxi-bug) is found outside of its premise . It is debatable that social utility outweighs gravity harm due to the harms of the insecticide not being mentioned in the fact pattern but can be assumed small due to the members being experienced butchers and consuming and donating the meat after spraying of insecticide.

4. Does DAN have any available Defenses ?

1. Coming to nuisance , DAN may raise a coming to the nuisance defense, because the Man's Club was established in 2004 and PERCY did not move near the Man's club until 2024.
2. Live and let live - DAN may raise a defense of live and let live because of the social utility outweighs the gravity of harm for the Man's Club.
3. Hyper-sensitivity - DAN may raise a hyper-sensitivity defense claiming that because PERCY belongs to a religion that believes life is sacred and no harm or distress should be imposed on sentient beings he had a hyper(increased) sensitivity to the crying and howling of their caged animals, as well as the smell of burning flesh, which to an ordinary person would be attributed to the smell of cooked meat.
4. Assumption of risk -- DAN may argue that when PERCY moved near the Man's club he exhibited implied assumption of the risk by moving near a club where a reasonable person should have known the activities of the club.
5. Conclusion -- PERCY may not be successful in a Nuisance suit against DOUG, due to his hyper-sensitivity and the social utility of DOUG's practices.