MONTEREY COLLEGE OF LAW

REAL PROPERTY

Final Examination

Spring 2025

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.

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Question 1

Amy owns Lot #1, located in a residential subdivision on a cul-de-sac named Stone Street. Lot #1 is the only lot at the end of Stone Street. Lot #2 is owned by Bianca and is adjacent to Lot #1 on Stone Street. Lot #3 is owned by Charles, and is at the far end of Stone Street, about 200 yards away from Lot #1. Amy, Bianca, and Charles are the original owners of their respective lots, which they purchased 13 years ago from the original owner of all the land that is now the subdivision when the subdivision was created.

There is a public park directly behind Lot #1 that was created 15 years ago, which is accessible from other public streets. At least once per week for the last 12 years, Bianca and Charles have separately walked across Lot #1 to reach the park. They have always taken the same route. Eventually, Bianca and Charles wore a path along this route. Sometimes, Bianca maintained the path by filling in holes with gravel, and clearing brush on Lot #1. If Bianca and Charles could not cross Lot #1 on foot, they would have to travel several miles by public road to reach the park.

Neither Bianca nor Charles has ever spoken with Amy about crossing Lot #1, and Amy has never given express permission to Bianca or Charles to use Lot #1.

After 13 years of ownership, Amy sells Lot #1 to Deepa. One week later, Bianca sells Lot #2 in fee simple to Ed. In the days immediately following the sale of Lot #1, Charles and Ed continue to use the footpath. Within two weeks of purchasing Lot #1, Deepa builds a fence across the entrance to the footpath. When Charles and Ed inquire about the fence, Deepa tells them that they are not allowed to cross Lot #1.

This jurisdiction has a 10 year statute of limitation for prescriptive easement.

Discuss any easement claims that Charles and Ed might assert.

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Question 2

Four years ago, Adam and Cindy acquired Blackacre as joint tenants. Blackacre is a small residential lot with a single-family home on it. When they acquired Blackacre, Adam and Cindy verbally agreed that Cindy could live at the property without paying Adam rent if Cindy paid for the property taxes.

Immediately after the purchase, Cindy moved into the residence on Blackacre, and without Adam's knowledge, Cindy spent $10,000 to remodel the kitchen, and spent $40,000 to build a detached garage, with an apartment above it. After the apartment was completed, Cindy began renting it to tenants for $1,000 per month, and she did not provide any of the rental income to Adam.

About a year after the purchase, unbeknownst to Adam, Cindy stopped paying the property taxes for Blackacre, and the amount due is now $5,000.

About three years after the purchase, without Adam's knowledge, Cindy obtained a mortgage secured against her interest in Blackacre. Several months later, Cindy died with a valid will gifting all of her estate to David including "all interest in Blackacre." David immediately filed a partition action.

In the partition action, what ownership and accounting claims might Adam and David assert? If a partition is ordered, will the Court likely order a partition by sale or partition in kind, and why?

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Question 3

In 2004, Olga purchased fifty adjacent, undeveloped parcels that were zoned for single-family dwellings. Located nearby to Olga's property was a medical laboratory operated by Acme Chemicals on its property, which had occasionally emitted unpleasant odors for many years.

In 2020, Olga sold 40 of her parcels to Bob, who never built homes on, or has ever otherwise used the parcels in any way. Olga then constructed the roads necessary to connect each of her remaining 10 parcels parcel to the main roadway.

In 2023, Acme discovered a cure for a fatal disease. Over the following year, the lab was expanded to three times the original size to begin production of the curative medicine. Afterwards, an unpleasant odor constantly drifted over the land owned by Olga and Bob. Acme could have reduced the emissions, but the cost of doing was expensive and would have greatly delayed production of the medication. At the increased rate of production, Acme will have cured the disease worldwide in four years.

In 2025, Acme began pouring a nontoxic byproduct of the manufacturing process into soil on its property, which is not against the law. That byproduct seeped into a common underground water source and contaminated the well Olga had developed for her parcels. The byproduct is considered not harmful to health, is odorless, and tasteless, but Olga claims she has an allergic reaction to the water from her well if she drinks it.

Discuss Olga's rights and remedies against Acme.

Discuss Bob's rights and remedies against Acme.

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REAL PROPERTY-OUTLINE

Professor Justin O'Connell

Spring 2025

Question 1

Easement implied by prior use

- *Any claim against A applies to D (existing encumbrance, if any)*
- *Common owner initially (not issue with A to D transfer)*
- *Park existed prior / no indication of use*
- *Anything apparent to A?*
- *Reasonable necessity to access a park?*

Easement implied by necessity

- *No facts indicate B and C are landlocked*

Express easement

- *Facts indicate never in writing*

Prescriptive easement

- *Actual*
- *Open/Notorious*
- *Hostile*
    - *A knew and did nothing*
    - *Just neighborly or sleep on rights*
- *Time period*
- *Tacking to D*
- *B and C appurtenant or in gross*
    - *Proximity of properties*
    - *If in gross to B was it transferred to E*

Q2-OUTLINE

JT presumption of equal ownership – possibly limited accounting

- *But there was an oral agreement contrary to no accounting rule*

Charles (through David)

- *$10k remodel – right to recover or just increased value*
- *$40k garage - right to recover or just increased value*
- *How are the improvements arguably different*
- *Mortgage pay off – Charles' debt so not reimbursable but added to David's equity ledger*

Adam

- *Lien theory or title theory jurisdiction – if lien then Adam takes property and no partition*
- *Claim to rent to Charles*
- *No ouster, so no claim directly against Charles (D) for rental value of C's occupancy*
- *Taxes due by Charles by agreement not equally*
- *Oral agreement / partial performance by Charles and Adam*
- *Charles violated by non-payment and remaining on site*
- *Claim against Charles' interest (D) for unpaid taxes*

Type of partition

Law favors in kind, but not practical here

Q3 OUTLINE

Olga and Acme

Is the interference substantial

- *Smell preexisted - "coming to the nuisance"*
- *Smell intensified but will end when everyone is cured*
- *Water is not harmful to anyone but Olga*

Is the interference unreasonable

- *Smell might be unreasonable except for why the smell is being emitted Cost of prevention might need to be borne by Acme, but it might cause deaths*
- *Acme could dispose of byproduct elsewhere – be safe not sorry and keep it out of the water supply*

Balancing interests – social utility vs gravity of the harm

- *Curing a disease vs. nonuse of property*
- *Allergic reaction is an abnormal response – water is not unreasonable from the reasonableness standard*

Bob and Acme

Is the interference substantial

- *No harm yet. No indication he cannot use the land and he is not using the land. No prior damages.*

Is the interference unreasonable

- *No harm yet. No indication he cannot use the land and he is not using the land. No prior damages.*

Balancing interests – social utility vs gravity of the harm

- *Bob has no harm yet. No indication of a reduction in value. Perhaps the smell could put off someone wanting to buy a home on his land, but he hasn't built one yet and as time goes by the period the smell exists reduces.*

1)

Question 1 is a classic analysis of easement rights. Easements are a non-possessory right to use another owner's land for a limited, defined purpose and include both a dominant estate and servient estate in the case of appurtunant easements (as opposed to easements in gross which only have a servient estate).

1. Is there an easement?

First, lets analyze whether an easement was actually created by Charles and Bianca's weekly traversing of Amy's lot. Easements can be created in one or more of six ways: Necessity, Expressly, Estoppel to include detrimental reliance, Eminent Domain, Prior Use, and by Prescription.

a. Was an easement created by necessity?

Creation of an easement by necessity occurs when there is no means of accessing a parcel to gain access to a public road without traversing on another owners land. They are created when a property is divided and sold/transferred by a common owner to one or more owners. In the fact pattern, an original owner sold created a subdivision and sold the divided parcels to Amy, Bianca and Charles 13 years ago. Thus, one of the requirements for even entertaining an easement by necessity is met given they were created from a single, larger property. The next requirement is whether the resulting split created the "necessity" to traverse one of the subsequent owner's land to get to a public road or resource necessary to enjoy the full use and enjoyment of their individual parcel. In this case, Charles and Bianca claim they need to traverse Amy's land to get to a public park adjacent to Amy's land. This park is accessible by other public streets, albeit not as convenient as crossing Amy's lot. Depending on the layout of these public streets, given that Charles and Bianca's lots are roughly 200 yards away from each other (since Bianca's lot is adjacent to Amy's lot), one of these parties has a lesser burden to get to the park.

The necessity claim fails for two reasons. First, the necessity argument fails insofar as their are alternative, though less convenient, ways of getting to the public park other than traversing Amy's lot. Second, and arguably more important, is that accessing a public park is not a "necessity" in the first place to realizing maximum use and enjoyment of one's land! + no indication this "split" alone caused inaccessibility

2. Was an Easement created Expressly?

The answer is a simple "no" as Charles and Bianca never spoke to Amy regarding an agreement and nor was their one in writing as required by SOF. Further, after Amy sold her lot to Deepa after 13 years of ownership, Deepa "expressly" told both Charles and Ed--the new owner of Bianca's lot--that they were not allowed to cross Deepa's lot. Further, since this issue involves land, any express easement must be in writing as required by the statute of frauds.

3. Was an Easement created by Eminent Domain?

The fact pattern offers no details whether governing bodies took part of Amy's property in an eminent domain action to provide a more convenient path for the cul-de-sac residents so, no; an easement was not created by eminent domain.

4. Was an Easement created by Estoppel? Rule? was there any promise by the servient owner

This is where the analysis gets interesting. Bianca maintained the now worn path by filling holes and clearing brush that accumulated around the path which put her in a position of detrimental reliance (i.e., expending labor and money for gravel and tools to clear brush) in exchange for using the path on Amy's lot. Though her outlay was minimal given the minor work involved versus the benefit her and Charles realized from using the path on Amy's land, a court would consider the estoppel argument but its weight likely doesn't create an easement. The court would consider what Charles and Ed "lost" as a result of not being able to use the path as a result of Deepa's blocking the path and the

Not an easement by estoppel

loss is arugably minimal given there are other means of accessing the park as discussed above in an analysis of the necessity claim.

5. Was there an easement created by Prior Use? Rule?

Given that the park predated the subdivision by two years, there could not have been any prior use by either Charles or Bianca and certainly not Ed to access the park since none of their lots as well as Amy's even existed. Therefore, there can be no claim of easement by prior use.

6. Was there an easement created by prescription?

A prescriptive easement is created when all four of the following conditions are met: continuous use (during the statutory period), hostile (non-permissive use), actual use and notorious/open use. Per the fact pattern, Charles and Bianca used the path weekly for last 12 years prior to Amy and Bianca's sale to Deepa and Ed, respectively. This exceeds the statute of limitations for prescriptive easements by two years and thus, satisfies that requirement for continuous use. Deepa's purchase of Amy's lot did not terminate any prescriptive claims that developed in the preceding 12 years and assumes Amy's lack of terminating any conditions that could create a prescriptive easement. Further, they used the same path during this entire time so it was actual use of the same path and it was presumably notorious/open for all to see and not hidden from Amy. Since Amy never spoke to Charles and Bianca regarding the use of the path, i.e., never denied their use, it was for all practical purposes hostile and non-permissive (silence is not a form of permission).

For these reasons, Charles arguably holds a prescriptive easement across what is now Deepa's lot.

85 good job - you should consider setting forth a rule or definition first to 1) demonstrate you know it & not just how to apply it; and 2) it will help guide your analysis if you follow your stated rule or definition

But what about Ed who purchased the lot just two years ago and also continues to use the same path across Deepa's lot? Ed's use of the path "tacks" onto Bianca's 12 years of using the path so he is entitled to the same easement rights.

Summary: Both Charles and Ed own an easement across Deepa's lot as a result of easement by prescription.

2)

This question covers key concepts regarding concurrent ownership of property and covers joint tenancies, tenancy in common, non-possessor claims, possessor claims, and accounting and contribution.

First, lets establish the role of each party. Adam and Cindy acquired Blackacre as joint tenants. This means they have equal ownership (50/50) with each tenant having 100% possessory interest in the land. Adam became a non-possessory party when he and Cindy verbally agreed to allow Cindy to live at the property without paying rent to Adam in exchange for Cindy paying property taxes that appear to be $5,000 annually. Cindy immediately "contributed" $50,000 to remodeling the kitchen ($10k) and building a detached garage with an apartment ($40k). The apartment was rented for $1,000 and we will assume that the rent started immediately following the purchase (i.e., rent starts from month one of purchase). After three years of ownership (and assume continuous apartment tenancy at $1,000 monthly), Cindy obtained a mortgage secured by her 50% interest. Cindy died several months after obtaining the mortgage and had earlier bequeathed her interest in Blackacre to David. David did not want ownership of the property Cindy willed to him and sought a partition action to divide the property.

Let's examine Adam and David's claims that arise in the partition action by examining the timeline of events from acquisition to Cindy's death.

1. At the time of Cindy's death, was the property held in a joint tenancy or tenancy in common (we ignore tenancy in the entirety since a marriage is not involved)?

Adam and Cindy both held the property as joint tenants up to and possible even following Cindy obtaining a mortgage on the property for her interest. The key question is whether the property is in a title-theory jurisdiction or a lien theory jurisdiction. If in a title-theory jurisdiction, Cindy's mortgage will terminate the JT and convert title to TIC.

This is because in a title-theory jurisdiction, the lender actually holds the title until the mortgage is paid off; the change in title severs one of the unities of four unities required for a joint tenancy--in this case unity of title (time, possesion and interest don't change). However, if the property is in a lien theory jurisdiction, the joint tenancy remains intact as a lien is simply an obligation against the property but doesn't change Cindy's half of the joint tenancy ownership. This distinction is key to the analyzing the claims of Adam and David following Cindy's death.

2. Who owns the property after Cindy's death?

If a title-theory jurisdiction, from the analysis in the above paragraph, Adam and Cindy owned the property 50/50 as tenants in common as a result of the termination of the joint tenancy by securing a mortgage. This means that Cindy was free to bequeath her fifty percent share of the property (and the mortgage accompanying that share and that share only) to David. Adam owns a free and clear fifty percent of Blackacre and David owns a fifty percent share of Blackacre but with a mortgage.

If a lien theory jurisdiction, Adam owns 100% of Blackacre as Cindy's interest terminated immediately upon her death as well as the mortgage. The lender is SOL (but could have a claim based on SOF as we will examine later).

3. Who will prevail in a partition action brought by David?

Once again, we have the answer depends on whether the property is in a title-theory jurisdiction or a lien theory jurisdiction. If a lien theory jurisdiction, David has NO interest in the property and therefore has no standing to even bring a partition action. Adam will prevail on a motion for summary judgment or motion for dismissal.

If in a title-theory jurisdiction, David is a fifty percent owner per the tenancy in common and therefore has standing in a partition action. He is therefore entitled to relief/reimbursement from Cindy's contribution and liable for accounting as a result of

Cindy's collection of rent and failure to pay taxes (SOF, notwithstanding). Adam, as the other fifty percent tenant in common, also is entitled to relief/reimbursements of rents and liable for contributions made by Cindy should they be meet the criteria for valid contributions.

4. Cindy's (now David's) Claims vis a vis Cindy's Contributions

Cindy spent $10k remodeling the kitchen and $40k building an income producing garage/apartment. Both of these expenditures enhance the value of the property and are not solely cosmetic with little added-value. Nearly every real estate agent and home improvement magazine/website encourages remodeling kitchen and bathrooms and go as far as to say every dollar invested in a kitchen returns $1.50 or so in increased value. Cindy's kitchen remodeling arguably has added value to the property and is subject to reimbursement by Adam

Further, Cindy's development of the garage/apartment is certainly an enhancement in value to the property demonstrated with actual income of $1,000 which we assume is fair market rent. The garage/apartment likely is a "higher and best use" of this albeit small residential lot as it not only provides desirable garage space but an income producing apartment as well. Cindy/David is entitled to reimbursement for the $40k garage apartment.

5. Accounting

Although Adam has not made made any expenditures/contributions to the property following its acquisition, he is nonetheless entitled to rental income from the apartment prorated by his fifty percent share. Cindy/David (if title-theory) is responsible for all of the property taxes per the agreement (SOF notwithstanding). However, the analysis gets complicated since the fact pattern doesn't distinguish whether the property is in a non-

liability jurisdiction or liability jurisdiction. This will be addressed later when statute of frauds is discussed.

Let's go through a sample accounting to determine actual claims. Cindy contributed $50k to the property. The JT (and 50/50 TIC) recognizes each party is responsible for half of that investment. Adam and Cindy are responsible for $25k each (since it was determined that the entire $50k went to value-added improvements). Cindy, per the agreement for her exclusive possessory interest was responsible for $5k annual property taxes which she stopped paying after the first year. It is assumed that the property tax was paid in the first year of ownership but not the three subsequent years of ownership so Cindy is liable for $15k in property tax. Further, she never paid c-tenant Adam his 50% share of four years of rental income or 50% of $48k or $24k.

Thus Adam's accounting is $25k share to Cindy for kitchen/apartment reimbursement minus $24k he is owed in rental payments. He is not responsible for what would be his 50% share of property tax per the agreement with Cindy. Adam is to be reimbursed $1,000. However, in reality, if a lien theory jurisdiction where he has 100% ownership following Cindy's death, he is saddled with the tax debt of $15k.

As for David's accounting if a title-theory jurisdiction, David is entitled reimbursement from Adam of the $25k Cindy spent on Adam's fifty percent share of the ktchen/apartment and 50% of the rental income ($24k) for a total reimbursement of $49k. However, he is responsible for Cindy's delinquent taxes of $15k netting a net reimbursement from Adam of $36K.

6. How does the statute of frauds impact the analysis?

Given the issues here involve real estate, all agreements and leases must be in writing. Adam and Cindy had a verbal agreement regarding Cindy's exclusive possessory interest in Blackacre and therefore per the SOF, is invalid. This means that the obligations of the

any exception to SOF?

the joint tenants revert to the statutes of the jurisdiction. If a non-liability jurisdiction, Cindy has no obligation to pay fair-market rent for her occupancy of Blackacre. However, she is still liable to share rental income with Adam. In a non-liability jurisdiciton, both parties are responsible for the carrying costs of the property--in this case property taxes. Cindy's contributions to the kitchen/apartment remain the responsibility of both joint tenants.

From this analysis, the lack of a written agreement between Adam and Cindy regarding her exclusive use of Blackacre does not impact the accounting.

7. Will the court order a partition by sale or partition by kind?

Given the small parcel size and single family residential use, partition by kind is impractical unless zoning laws allow dividing the lot into two parcels; one for the residence and one for the garage/apartment. Even without two separate legal parcels, the property could be divided in kind with a new tenant in common agreement where David gets one building and Adam gets the other building. They most likely will not fall along 50/50 value per the ownership but the values can be balanced with an 'owstly" reimbursement.

It would be much easier for the court to order a partition by sale if Adam and David cannot come to an agreement for a partition by kind such as the strategy described above.

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3)

Introduction

In order to determine the rights and remedies of Olga and Bob, it must first be determined if conduct constituting a nuisance has taken place.

Rights and Remedies of Olga and Bob

Nuisance

Conduct becomes a nuisance when it substantially and unreasonably interferes with another's property right to quiet enjoyment. A plaintiff has standing to sue for a private nuisance when they are individually affected by the conduct of another. A plaintiff has standing to sue for a public nuisance when the conduct of another results in a general harm that affects members of the community and the plaintiff suffers that harm as well as a distinct harm.

Here, Olga likely has standing to sue for a private nuisance because she is suffering an individual harm as a result of the conduct of Acme. No facts explicitly state that other members of the community are having their property rights interfered with and it seems Olga and Bob are the only people in the area next to Acme. Additionally, Olga has standing to sue for private nuisance because she has the property right to quiet enjoyment because she owns ten parcels of land next to Acme.

Here, Bob likely has little standing because while he owns property potentially affected by Acme's conduct, he has not claimed any individual harm as a result of Acme's conduct.

Substantial

Conduct must be substantially interfering with another's property right so as to constitute as a nuisance.

Here, Olga will contend that Acme's conduct of emitting unpleasant odors and pouring nontoxic byproduct into the soul is a substantial interference. The facts suggest that Acme's emitting of unpleasant odors was only occasional from 2004-2023, so Olga will have a difficult time arguing that during this time period, Acme's conduct was a substantial interference. This is because an occasional bad smell coming from a medical laboratory can be expected since they deal with chemicals and product byproducts. No facts suggest that the occasional bad smell occurred frequently or infrequently, but Acme will likely argue that because Olga did not decide to sue them for nuisance until 2025, the occasional bad smell was likely not an issue for Olga.

Olga will further contend that, if the unpleasant odors from 2004-2023 were not substantial, then at least the odor from 2023-2025 and pouring of nontoxic byproduct was substantial. A court would be much more warranted in finding this conduct by Acme substantial because the lab expanded to three times it's size and the unpleasant odor constantly drifted over the land owned by Olga. This constant unpleasant odor may be a substantial interference with the property rights of Olga because Olga's property is zoned for single family homes. As a developer, Olga may not be able to bring these homes to market because the smell will deter potential buyers of her homes.

In regards to the pouring of nontoxic byproduct, Acme will contend that because that conduct is not against the law, no conduct constituting nuisance has occurred. However, the court will not find this argument persuasive because conduct does not have to be unlawful to constitute a nuisance. Olga will likely make the argument that the pouring of this byproduct is substantial because it has seeped not only into the ground on Acme's property, but the ground, well, and water table under her parcels as well. If Acme's pouring of the byproduct was only slight, then it is unlikely that it would seep into the ground and deep into the water table like it did. Olga's argument that the pouring of the byproduct is a substantial interference with her property right is legally sound because her

well was contaminated by the conduct of Acme, and that would likely not have occurred had the pouring been infrequent or slight.

Overall, Olga is likely able to succeed in a claim stating that Acme substantially interfered with her property rights due to nuisance, at least from 2023-2025.

Bob is unlikely to succeed in a claim stating that Acme substantially interfered with his property rights because he has never developed or used his property in any way.

Unreasonable

Conduct of another must be unreasonable if it is to be considered a nuisance. Conduct is considered unreasonable when the social utility of the conduct is outweighed by the gravity of the harm the conduct will cause to society.

Here, Olga will contend that Acme's conduct is unreasonable from 2004-2023 because the emitting of unpleasant odors is unreasonable to her property rights because she owns parcels zoned for single family dwelling. Since people in Olga's community need a place to live, and since Olga needs to sell developed houses to buyers, Olga will argue that Acme's conduct hampers these two objectives and does so unreasonably because the social utility those objectives is being outweighed by the gravity of harm the bad odor is producing. This argument relies on the fact that prospective home buyers would be adverse to living in a home next to a chemical plant that produces on occasion, unpleasant odors. If that is true, then a court will be warranted in finding Acme's conduct during 2004-2023 unreasonably.

Acme will contend that their conduct was not unreasonable from 2004-2023 because the emitting of unpleasant odors was only occasional, and the social need of having a medical laboratory outweighs the social need of having homes free of odor. Additionally, Acme will argue that the gravity of harm does not outweigh the social utility of homing the

community because the smell during this time was only occasional, and known about, since they have been emitting unpleasant odors for many years.

Olga will contend that, if Acme's conduct was not unreasonable from 2004-2023, it was at least unreasonable from 2023-2025. Essentially, Olga will likely claim that the constant emitting of unpleasant odors and pouring of nontoxic byproduct is unreasonable because the gravity of harm outweighs the social utility of those actions. Acme's claim to the contrary will be more persuasive though, seeing as during 2023-2025, they have discovered the cute to a fatal disease. This fact may justify their conduct in the eyes of the court because the social utility of curing fatal diseases may outweigh the fact that houses nearby Acme will be subject to a bad odor and water contaminated by a nontoxic source. Acme will contend that because their odor and byproduct is not harmful or toxic, the gravity of harm is very low.

Overall, Olga's claim that Acme's conduct is unreasonable will potentially be unpersuasive to the court because of the social utility of Acme's work and because Acme's harms are minimal. While Olga does claim an allergic reaction to the well water since it has been contaminated, this may be because she is an abnormally sensitive plaintiff and not a reasonably affected person.

Bob's claim that Acme's conduct is unreasonable will be unsuccessful because he has little standing to assert a nuisance claim, and if he did, he would not be able to make a convincing argument that Acme's conduct is unreasonable because he has never used the parcels in any way.

Defenses - Coming to the Nuisance

Coming to the nuisance is a partial defense to nuisance and is when the party alleged to have caused the nuisance argues that the plaintiff knew of the nuisance before they

moved close to it or became affected by it. When a plaintiff comes to the nuisance, courts will often consider the availability of some forms of injunctive relief and damages.

Here, Acme will contend that Olga came to the Nuisance because she bought property next to a medical laboratory known to occasionally emit unpleasant odors. Olga will contend that, while she may have known about occasional odors being emitted, she did not foresee the the medical laboratory's emitting becoming constant.

Bob will have no claim to combat Acme's claim that he came to the nuisance because he never used the property.

Defenses - Abnormally Sensitive Plaintiff

Courts use the reasonable person standard to determine if a party's conduct has substantially and unreasonably interfered with the property rights of another. When the claim of nuisance is asserted by an abnormally sensitive plaintiff that does not react the same way a reasonable person would to conduct, courts will not consider conduct in light of that abnormal sensitivity.

Here, Acme will contend that Olga is an abnormally sensitive plaintiff because she is the only one who has reacted negatively to the chemical byproduct. Since no other facts suggest that the byproduct is toxic or that other members of the community have been affected by the byproduct, it would be difficult to persuade a court that the byproduct would affect the reasonable person.

Olga will contend that she is not an abnormally sensitive plaintiff because many people may have the same allergy that she has, but have not yet been exposed to the byproduct because the houses were just developed in the contaminated area and no one else may live on her properties yet. Olga will further contend that she is not abnormally sensitive in regards to the unpleasant odor because many reasonable people would find an unpleasant odor unacceptable when deciding where to buy a home.

Overall, the it is unsure if the court would find Olga to be an abnormally sensitive plaintiff in regards to the byproduct, but the facts suggest that Olga may not be an abnormally sensitive plaintiff due to her reaction to the unpleasant odor.

Bob is not an abnormally sensitive plaintiff because he has asserted no harm that would indicate so.

Remedies

Courts have four main methods to provide relief to a plaintiff who validly asserts that a nuisance has occurred. Courts may order a preliminary injunction against the party allegedly causing a nuisance before trial if they belief that party's conduct to be especially dangerous or heinous. Courts may order an injunction at the end of a suit when they determine after litigation that the party's conduct is a nuisance. Courts may award past damages to a plaintiff asserting a nuisance claim if they have suffered harm from the nuisance for a long period of time. Courts may award future damages to a plaintiff if they determine that, while the defendant's party is a nuisance, it is permissible and the plaintiff should be awarded money as a consolation.

Here, if the court finds that Acme's conduct was a substantial and unreasonable nuisance from 2004-2025, they will likely award past damages to Olga. However, it is more likely that they will consider the occasional nature of the odor from 2004-2023 so they will instead award past damages arising from the conduct in 2023-2025.

It is unlikely that the court will order a preliminary injunction against Acme because their conduct is not so dangerous or hazardous to warrant that order. Courts may order an injunction against Acme after litigation if it is found that their conduct is substantial and unreasonable enough to warrant that order.

Overall, it is likely that the court will award Olga future damages because they will likely allow Acme to continue in their conduct seeing as the gravity of social harm is low compared to the high social utility of the conduct.

The court will likely not award Bob any damages or order an injunction against Acme on Bob's behalf because he has no standing to assert a claim of nuisance.

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END OF EXAM