

**June 2014 Baby Bar  
Question 1 – Torts**

**1. What tort claims can Harry reasonable bring against Flowers? Discuss.**

**Harry v. Flowers**

**Private Nuisance**

A private nuisance is an intentional or negligent nontrespassory interference with the plaintiff's interest in the use and enjoyment of her property.

Flowers built a greenhouse facility in a rural area. Because many of the plants grown in the greenhouse require more light than is naturally available, Flowers installed a system to provide light during normally dark periods. The light was extremely bright and casted a glow far beyond Flower's property. Harry purchased a home directly facing Flower's greenhouse. After living there a few months he could not tolerate the light coming into his windows 24 hours a day. He asked Flowers to turn off the lights, and Flowers refused. Thus, the making of continuous perpetual light coming through Harry's windows was intentional. The 24-hour a day continuous light bothered Harry to where he could no longer tolerate the light. Therefore, Harry was affected by the light. Further, Harry purchased the residence. This is where he lived, and slept. Hence, the continuous light is an interference with the plaintiff's interest. Further, Harry is a homeowner. Like most homeowners, he likes to come home and relax after a hard day at work. When the sun goes down and Flowers lights are not turned off, it is always light outside not allowing Harry to enjoy activities on his property. Hence, there was an interference with the plaintiff's interest in the use and enjoyment of his property.

Therefore, Flower's activities are a private nuisance.

**Coming to the Nuisance**

The mere fact that the Plaintiff moved to the nuisance generally is not a valid defense. Flowers will argue that they put up signs all over the property warning prospective residents of the light created by the business, before Harry purchased his residence. Further, Harry saw Flower's sign when he was thinking of buying one of the nearby residences and figured the light could not be that bad. Thus, Harry was aware and should have foreseen there may be interference with the use of his land. Moreover, the courts generally hold that coming to a nuisance is no defense.

**Comparative Negligence**

The doctrine of comparative negligence apportions the relative negligence or fault, i.e., blameworthiness, of the Plaintiff and Defendant, and reduces Plaintiff's recovery of damages accordingly.

Flowers will argue that Harry voluntarily moved across the street from the greenhouse with the knowledge that there was continuous light 24 hours a day. Purchasing the house and moving directly facing the greenhouse Harry acted unreasonably.

However, Harry will argue that he did not know that the light would shine through his windows 24 hours a day. After three months he could not tolerate it anymore. As such, he did not contribute and is not at fault for the 24-hour light.

Therefore, comparative negligence will likely not be a complete defense.

### **Assumption of the Risk**

A person who expressly or impliedly agrees to confront the risk posed by Defendant's act and knowingly assumes the risk of his conduct is barred from recovery. Defendant must show that Plaintiff recognized and understood the particular risk, and voluntarily elected to encounter it.

Since Harry did see the signs on Flowers property warning the prospective property owners of the light created by his business and Harry went ahead and purchased a home directly facing Flowers greenhouse, he did so with full knowledge that the light was on 24 hours a day at the greenhouse. Thus, impliedly he appreciated the danger, in part because he went ahead and purchased the home directly across from the greenhouse. The fact that he knew of the 24-hour lighting and appreciated the potential danger showed that Harry voluntarily chose to encounter the risk of injury.

However, Harry will argue he did see the sign and was aware of the light. But, he did not know that the light would come through his windows. Since he did not know that the light would shine through his windows, nor did he know that he would not be able to tolerate it, he did not impliedly agree to confront the risk posed by the continuous light.

Therefore, assumption of the risk is not a valid defense.

### **Public Nuisance**

A public nuisance is an act by the Defendant that causes an obstruction or inconvenience to the public in the exercise of rights common to all. The general rule is that the attorney general needs to bring the action. A private party may bring an action for public nuisance if he suffers harm different in kind than the public at large.

Flowers lights during normally dark hours, making it light 24 hours a day and shining into residence windows in a relatively newly developed area, effects Harry and interferes with the use and enjoyment of his home, which is not harm suffered by the public at large. Although the lights do cause a glow beyond Flowers property, affecting others, Harry's residence is located directly across from Flowers' greenhouse.

Although Harry can't tolerate the light coming into his windows 24 hours a day, Flowers installed the light in order to provide needed light for his plants during the dark period. The need to have the light in order to grow his plants for his business is imperative. Further Flowers employs 20 workers, and spent over 20 million dollars in building his greenhouse facility and based on the circumstances outweighs the inconvenience suffered from one individual, i.e., Harry

Harry will likely argue that experiencing light 24 hours a day is disruptive to his body and his sleep. He might also be able to prove that a different type of plant could be grown to prevent the need for 24 hour lighting. This would be less obstructive and inconvenient to his use and enjoyment of his property.

Overall, the court will find no public nuisance since the harm is not different in kind than the other surrounding neighbors.

### **Negligence**

Negligence requires a showing that a duty was owed, that the duty was breached, and that the breach was the actual and proximate cause of plaintiff's damages.

### **Duty**

Defendant has a duty to act as a reasonable prudent person under the same or similar circumstances.

Flowers owes the neighboring residents a duty to not subject them to continued light 24 hours a day. A reasonably prudent person would take those steps reasonably necessary to assure that the continuous light does not bother surrounding residences. The fact that Flowers installed a system to provide light during the dark period in order to help his plants grow, and the light is interfering with the surrounding neighbors does not establish a relationship with Harry creating a duty owed to him.

Therefore, Flowers does not owe a duty of care to Harry

### **Duty – Cardozo and Andrew Views**

Harry will argue that under the Cardozo view, Flowers owes a duty of care to foreseeable plaintiffs in the zone of danger.

Since Harry is a nearby property owner, who has a residence next to Flowers, Harry is within the foreseeable zone of danger of Flower's conduct.

Flowers will counter although they did install a system to provide needed light during dark periods the greenhouse was built in a rural area. There were no surrounding homes at the time of installing the lighting system. Further, the suburban area around the greenhouse did expand and homes were built closer and closer to the greenhouse.

Flowers did place signs all around the property warning prospective residents of the light created by the business. Thereafter, Harry, who had seen the warning sign, figured that the light could not be that bad and purchased the property located directly facing Flower's greenhouse. Since Harry was within the neighboring area of the greenhouse, Harry is within the foreseeable zone of danger.

Therefore, the court will find Flowers did owe a duty of due care to Harry.

### **Breach**

A breach is a failure to act as a reasonable, prudent person under the same or similar circumstances. A Defendant breaches a duty through an act or omission that exposes others to an unreasonable risk of harm.

Harry will argue that Flowers, by not turning off the continued light they did not act as a reasonably prudent person. Further, the light interrupts his nights and causes him to experience 24 hours a daylight coming through his windows. Flowers did not warn him of how the continued light would affect his use of the property.

However, the court will balance the risk versus the benefit of Flowers conduct. The light does cause continuous light making it daytime 24 hours a day for Harry. Further, Harry can't tolerate the light coming into his windows 24 hours a day. However Flowers needs the light in order to keep growing their plants. The benefit of the light is that the plants require more light, which helps the plants grow. Flowers is able to sell these plants that has made them a successful business. However, Flowers could build a solid closure where the light would not be exposed. That way the plants would receive the continued daily light 24 hours without the light bothering anyone. Although the lighting system does allow the plants to receive the needed light for there continued growth, the inconvenience suffered by Harry and other neighboring properties is not outweighed by the need of the 24-hour a day light. Therefore, Flowers did not act reasonable.

Therefore, Flowers did breach their duty of due care.

### **Actual Cause**

"But for" Flowers installing and allowing continued light 24 hours a day, Harry would not have experienced light coming through his windows 24 hours a day interfering with his use of his home.

Thus, Flowers was the actual cause of Harry's intolerance.

### **Proximate Cause**

It is foreseeable that leaving a light on 24 hours a day and not allowing the dark part of the day, that neighboring property owners would be affected and disturbed by the continued light. Moreover, it is foreseeable that a neighbor, like Harry, would suffer from the continued light 24 hours a day.

Therefore, Flowers was the proximate cause of Harry's intolerance.

### **Damages**

Discussed in call 2.

### **Contributory Negligence**

At common law, the Plaintiff's contributory negligence, however slight, was a complete bar to his recovery against a negligent defendant. If a Plaintiff's conduct falls below the reasonable person's standard of care and contributes to his own injury or damages, he is barred from recovering against Defendant.

Flowers will contend that Harry was aware of the continued lighting near his property, evident by the fact that he did read the sign warning prospective purchasers of the light created by the business. Harry decided that the light could not be that bad and purchased a home directly facing Flowers. Thus purchasing a home knowing of the continued light show he acted unreasonably when he purchased the home. However, Harry did not know that the light would be able to shine through his windows 24 hours a day. After three months he could not tolerate it anymore. As such, he did not act unreasonable based on the facts.

Therefore, contributory negligence is not a valid defense.

### **Comparative Negligence**

Defined and discussed supra.

### **Assumption of the Risk**

Defined and discussed supra.

## **2. What remedies can Harry reasonable seek? Discuss.**

### **General Damages**

General damages are those damages that flow from the tort. Plaintiff must have sustained actual damages to person or property to recover for negligence.

Harry should recover general damages the diminution in value of his property.

## **Injunction**

### **Inadequacy of legal remedy**

Damages are inadequate when the subject matter in dispute is unique.

The issue is Flowers installing the light system and it causes light 24 hours a day to come through Harry's windows. Harry can't tolerate the light anymore. Damages will not make Harry whole, as he will still have the light coming through his windows at night. Hence, damages are too speculative. Further each time the light shines into Harry's window he would have a viable cause of action for nuisance. Thus, multiplicity of suits.

Therefore, the legal remedy is inadequate.

### **Feasibility**

Negative decrees order defendant to stop doing an act. The court will not issue a decree that would be difficult to supervise.

The court would issue a negative decree ordering Flowers to stop using the continued light. The court would not have to supervise and thus it would be feasible.

### **Preliminary Injunction**

A preliminary injunction is issued only after notice and a hearing. Its purpose is to maintain the status quo pending trial. Hardships are balanced at this stage.

### **Permanent Injunction**

A permanent injunction is issued only after trial on merits. Hardships are balanced at this stage as well.

### **Balancing Hardships**

In deciding whether to grant injunctive relief the court may weigh the hardship to plaintiff if the injunction is denied versus the hardship to defendant if injunction granted.

Harry's hardship is that the light is interfering with the use of his home. The light shines through his windows and he can't tolerate it anymore. Compared to Flowers hardship of not being able to use the needed light they would have to stop growing the plants that require the continuous light. The light is necessary in order for the greenhouse to continue in business. Further, Flowers employs 20 workers. If they are not allowed to continue in growing the plants that have made the business successful people will lose their jobs. However, Flowers does have an alternative. They can build a solid enclosure and grow the plants in the lights 24 hours a day without any light exposure to the neighboring properties.

Therefore, on balance, the court would most likely find for Harry since there is an alternative available for Flowers.

### **Defense – Laches**

Laches is an unreasonable delay by the plaintiff in initiating his equitable claim that results in prejudice to defendant. Laches begins to run from the time plaintiff has knowledge that one of his rights has been infringed.

Harry believed that he could tolerate the light when he purchased his property. However, after three months he could not take it anymore. Once he realized he could not take it anymore he asked Flowers to turn off the lights and they told him no. Harry then brings suit.

Flowers will argue that the light system has been there for twenty years, and the lighting is necessary for the greenhouse to run. Without the lighting they are not able to grow the plants since they need more light than is naturally available. The delay in bringing suit is unduly prejudiced to Flowers since they invested 20 million in building the greenhouse facility. If there was a problem with the 24-hour a day lighting that should have been brought up sooner. However, Harry just purchased the property three months ago and did not wait to file suit. Thus, no undue prejudice.

Therefore, laches is not a valid defense.