

**FEBRUARY 1998 CALIFORNIA BAR EXAMINATION  
ESSAY QUESTIONS AND SELECTED ANSWERS**

*Remedies*

**QUESTION**

Halfway, Inc. is a nonprofit organization, licensed by the state, to assist with the rehabilitation of former convicts. It owns a five-bedroom house in a residential neighborhood of well-maintained single-family homes. The house purchased by Halfway is on a parcel zoned for multiple family use, as is a small apartment building across the street. The remaining parcels in the area are zoned for single family use only.

For the past three months, Halfway has been using the building as a halfway house for parolees from state prison. At any given time, six to eight parolees live in the house while they look for employment and adjust to life in society. Most of the parolees are former sex and drug offenders. Such offenders have high recidivism rates. There is strict supervision by at least one resident director on the premises at all times. Halfway has successfully operated halfway houses in three other residential neighborhood locations in the state, attributing its success to the beneficial influences inherent in established residential environments.

Residents and property owners in the neighborhood have formed NASS, a neighborhood association that wants to prevent the halfway house from continuing to operate. NASS members are concerned about their safety, the safety of their children and their property values. While the halfway house was being renovated in preparation for the parolee program, one of Halfway's employees, not a parolee, assaulted a woman who lives in the neighborhood and is a NASS member.

NASS recently discovered that twenty years ago an injunction had issued and been recorded in the chain of title of Halfway's parcel forbidding the use of the property as a residence by unrelated persons living together. The injunction had issued because a group of college students, while living in the house, caused disturbances with late night parties and loud rock music.

NASS, on behalf of its members, has sued Halfway. In its complaint, NASS prays for: (1) an injunction against operation of a halfway house on the parcel Halfway has purchased on the grounds that the halfway house constitutes both a public and private nuisance and (2) a declaratory judgment that the twenty year old injunction is an *in rem* injunction that prevents Halfway from operating the halfway house.

What evidence must NASS produce to make a *prima facie* showing on each of its claims, what defenses might Halfway reasonably assert, and how should this court rule on each of NASS's claims? Discuss.

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**ANSWER A**

NASS, a neighborhood association concerned about their safety, their children's safety and the value of their property, recently filed an action against Halfway, Inc., a nonprofit organization, licensed by the state to operate a halfway house to assist with the rehabilitation of former convicts. NASS' main objective is to have Halfway enjoined from operating a halfway house in their neighborhood claiming their presence constitutes both a public and private nuisance.

The defendants operate a halfway house which is located in a residential neighborhood. Although the majority of the neighborhood is zoned for single-family residences, the parcel which Halfway house is on and an apartment across the street are zoned for multiple family use so there is no zoning violation. However, the halfway house consists of five bedrooms and for the past three months have, at any given time, six to eight parolees living there while seeking employment and readjusting to life in society. In addition there is always at least one resident director on the premises to supervise the parolees.

Nuisance - In order to establish a prima facie showing of a nuisance plaintiffs must prove an intentional and unreasonable interference with the use and enjoyment of their property. For a public nuisance, plaintiffs must also prove their injury to them is different in kind and scope than the injuries to other members of the community.

Intentional Interference - while the defendants do not actually have to "intend" to interfere with plaintiffs use and enjoyment of their land, once defendant has been notified that such interference exists and continues his conduct regardless, intent is found.

Due to the fact that halfway house was established to help rehabilitate former convicts and that most of the parolees are former sex and drug offenders, NASS is concerned for their own safety and the safety of their children. In addition, they believe that the value of their property will decline due to the operation of the halfway house in their community. While this is a genuine concern, their potential "interference" with the use and enjoyment of their property is no different in kind than other residents in the adjoining neighborhoods, thereby precluding a claim of Public Nuisance. However, one of the NASS members was recently attacked. This incident might allow that particular member to assert a public nuisance (since her injury is different in kind than the community at large), however, it will not give the association and other residents in the neighborhood the right to a public nuisance claim.

With respect to private nuisance, if plaintiffs can show that due to the presence of the halfway house, they can no longer allow their children to play outside, they themselves are put in fear whenever they leave and return to their homes, thus depriving them of the use and enjoyment of the property, they might establish a private nuisance.

Balancing - In order to establish whether or not there is a nuisance, the courts will balance the utility of the conduct vs. the harm to the plaintiffs. Here, while the potential harm to

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the residents is a genuine concern, the facts indicate that halfway house has had a great deal of success in rehabilitating former convicts and attribute this to the environment of a neighborhood similar to the one NASS is trying to protect. Additionally, it has always been a public policy to try to “rehabilitate” our criminals - this would be a very difficult task to accomplish if there was no place for them to go to while adjusting to life in society and attempting to obtain employment. While plaintiffs will argue that the danger is great, due to the recent attack on one of its members, the attack was not done by one of the former convicts, but by one of the employees of halfway house.

Defendants will argue that the fears are unwarranted, that parolees are under strict supervision and that the attack on one member was not a result of the operation of the halfway home, that since the parolees are under strict supervision, the plaintiffs’ fears are unwarranted and at the very least premature. The home is proper under the zoning laws and there has been no interference with the plaintiffs’ use and enjoyment of their property.

Conclusion - On balance, while the plaintiffs have a genuine concern, the defendants’ conduct most likely will not be considered as either a public or private nuisance depriving plaintiffs of the use and enjoyment of their property.

Injunction - for plaintiffs to prevail with the injunction, they must show:

1. underlying cause of action (here tort theory of nuisance);
2. Mutuality of remedy - primarily required at common law but courts now have basically abandoned. If following in this jurisdiction, plaintiffs will have a problem establishing mutuality of remedy.
3. Feasibility of degree - here there should be no problem since once enjoined, if the party continues the conduct enjoined, the court can hold them in contempt.
4. Inadequate remedy at law - here plaintiffs argument is for their own peace and safety, which no amount of damages can compensate them for, so that their legal remedy is inadequate. [However, where diminution in the value of the property is concerned, they may be able to obtain damages].
5. Balancing test - many courts will do a second balancing test looking at the utility of the conduct vs. the harm to plaintiffs. As stated above, the utility of defendants conduct is great in terms of public policy - however it is not the type of conduct which may bring in jobs and other financial type benefits to the community. Yet the potential harm to the plaintiffs is also great in that their main purpose is purchase in this type of neighborhood was for the peace of mind this type of neighborhood

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somewhat insures.

Defenses to injunction are equitable - laches; unclean hands - which do not seem to pose a problem here.

Declaratory Judgment - 20 years ago an In Rem injunction which prevents Halfway from operating the halfway home on the premises.

Plaintiffs would like to have the court order that the injunction issued 20 years ago was In Rem (meaning against the property and not against the particular individuals residing there at the time). This would be very beneficial in that they would not have to prove nuisance and obtain a new injunction, and the defendants would be held in contempt if they didn't comply. However, the injunction issued at that time was for different purposes and will probably not hold.

Defendants will argue that the previous injunction was against loud noise and late night parties. These actions are not the type of conduct plaintiffs are complaining about in the current action. Furthermore, over 20 years have passed and circumstances have changed.

**ANSWER B**

**NASS' CLAIMS, HALFWAY'S DEFENSES, AND HOW COURT SHOULD RULE**

**I. Public Nuisance**

**A. NASS Claim**

To make out a claim for a public nuisance, NASS must show a (1) unreasonable interference (2) with the health, safety, or property rights (3) of the community. To be entitled to relief on this claim, NASS must also show an injury that is special to it, uncommon from the rest of the community.

**1. Interference**

Here, NASS (N) can assert that Halfway's (H) proposed halfway house will be an unreasonable interference because the house will contain parolees from state prison. At anytime, the house contains six to eight parolees who live in the house while they look for employment and adjust to life in society. This implies that the parolees are probably continuously loitering about the neighborhood, since they are not gainfully employed. Additionally, this gives the parolees additional time, day or night, to do whatever they please, including getting into trouble with the neighborhood. This clearly is unreasonable.

Additionally, N should show that most of the parolees are former sex and drug offenders, and such offenders have high recidivism rates. This clearly would

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also be an unreasonable interference - if one of the parolees acted on the neighborhood residents.

2. The Public Safety, Health, or Property Rights

NASS should assert that because of the unreasonable interference, the community's safety, the safety of their children and their property values all are in jeopardy. These rights are common to the community.

3. Special Injury

NASS could also assert that it has already sustained a special injury because a woman who lives in the neighborhood was assaulted during construction of H's house. The victim is also a NASS member.

B. H's Defense

He should assert that the interference is not unreasonable because it has successfully operated halfway houses in three other residential neighborhoods in the state. It should also note that its success is due to the beneficial influence inherent in established residential environments. H should also assert that it has been in the neighborhood for 3 months and that there has been no criminal activity or interference of the kind complained of by NASS in the community that was committed by a parolee. It has been a peaceable co-existence with the parolee's for 3 months.

H should also show that it has put safeguards in place to ensure that the parolees do not go back to their life of crime or unreasonably interfere with the community. Specifically, there is strict supervision by at least one resident director on the premises at all times.

H should also assert that the interference is not unreasonable because the house was specifically zoned for multiple use. Additionally, its services benefit the public at large because it is rehabilitating parolees, who might otherwise revert back to their criminal ways without the assistance of H.

H should also assert that N has sustained no personal injury that is special from the community at large. The nuisance complained of is the housing of parolees in the neighborhood. The injury pointed to by NASS is the assault by a NASS employee. Thus, the injury is not related to the relief sought and is thus not special to allow the action.

C. The Injunction

NASS is seeking an injunction for the alleged public nuisance. To get an injunction it must show that legal damages are inadequate, that a property interest is implicated, that an injunction would be feasible, that the hardships balance in its favor and H has no defenses.

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Legal damage would be inadequate to compensate for sexual or drug related offenses to the community. N can point to its property values as implicating a property interest. Also, because most courts now allow personal rights to be redressed by injunction, N could point to its safety and health needs of the community. An injunction would be feasible because the court could enjoin H's activities with a negative injunction.

As for hardships, they are normally not balanced when the conduct is intentional. But here, there really has been no injury or intentional conduct causing an interference. N would assert that its safety and welfare favor it but H could counter that it is doing good for society as a whole by rehabilitating parolees.

H could assert two defenses. The first is that N is barred by laches. Laches is a defense when a party, in equity, watches another party act to its detriment before seeking to enjoin the activity. Here, NASS was aware that H was renovating the house because one of its members was assaulted. Additionally, H has operated the house for three months before suit was brought. In the three months, H has settled into the house and begun operations. This was all done while N sat back and watched.

H can also assert its 1st Amendment rights to freedom of association, the association being the parolees.

### Court's Ruling

Given the arguments addressed above, the court should rule that N is not entitled to an injunction for public nuisance. First, the interference (if there is one) is not unreasonable and does not affect the health and safety of the community. Additionally, N has sustained no private injury to have standing to maintain suit. Finally, N should be barred by laches because of its inequitable conduct and the balance of hardships in favor of H.

## II. Private Nuisance

In order to make out a claim for private nuisance, N must establish a substantial, unreasonable interference with the use and enjoyment of personal property. N would assert for the same reasons noted above that the interference by H is substantial and unreasonable. H would respond in the same way but also point out that the interference must be substantial. H would assert that there is no substantial interference here because there has actually been no interference at all.

N would assert that the use and enjoyment of property rights of its members are being infringed on for the same reasons noted above, that the health, safety and property interests of the community were being infringed on.

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H would respond that there is no such interference with use and enjoyment as noted above and that the N members are able to use and enjoy their property as much as they had before.

The court should deny the private nuisance request for the same reasons as the public: no interference, and the same defenses and balance of hardship weigh in favor of H.

Old Injunction

The old injunction should not be applied against H. The old injunction was clearly not In Rem against the house and has expired. Looking at the language of the injunction, it was directed to a specific group of college kids. Also, the apartment across the street, zoned that way, shows there is no harm in unrelated persons living together.

This also infringes H's 1st Amendment right of association, which were not clearly advocated by the US Supreme Court when the old injunction issued. The house is also a successful endeavor for the benefit of society and thus the injunction should not issue. The old injunction also was a result of a specific injury with a particular set of facts: The injunction should not be used to prevent a different situation from continuing or operating.