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**1. What claims may Pedro (P) reasonably assert against Diana (D)?**

**Private Nuisance**

A private nuisance is a (i) substantial and (ii) unreasonable interference (iii) with the use and enjoyment of one's property.

*Substantial and Unreasonable Interference*

The interference must be substantial and offend a reasonable person in the same or similar circumstances. Mere annoyances, or not continuous interference will not amount to a substantial and unreasonable interference. Additionally, the court will not consider a plaintiff's claim for private nuisance that is *hypersensitive* to certain activities.

Here, the facts state that Pedro was *horrified* by the noise and vibration coming from the theater during rock concerts. Pedro could feel the floor shake and could not have a normal conversation because of the loud noise. P will argue that this should be considered a substantial and unreasonable interference, because it appeared to be extremely loud and the vibrations could be felt. So loud, in fact, that P could not even have a normal conversation. D on the other hand, will argue that this only occurs on weekend evenings, so it is not enough to constitute a substantial and unreasonable interference. People go to concerts on the weekend, and D will argue that this is not unreasonable.

However, there was likely a substantial and unreasonable interference with Pedro's use of the property.

*Use and Enjoyment of One's Property*

Furthermore, the substantial and unreasonable interference must be enough for the plaintiff to not be able to enjoy the use of his property.

As discussed above, P cannot hear himself when having conversations in his own house, and can constantly feel the hard vibrations. Additionally, the facts state that P bought the house with the intention that his new house would be a perfect place to raise a family. Therefore, it can be inferred that P may have a young family, and children would likely be disturbed by the loud noises and vibrations.

*Conclusion*

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P can reasonably assert the claim of private nuisance against D.

### **Public Nuisance**

A public nuisance is a substantial and unreasonable interference that affects the community at large. The plaintiff must suffer a harm that is different from the rest of the community.

Here, the facts state that P talked to his neighbors and learned that his neighbors complained to D and they were unsuccessful in obtaining relief, and that they decided to live with it in the end. There are also no facts to support that P suffered a harm different from that of the community, or the neighbors he spoke to.

As a result, P cannot reasonably assert a claim of public nuisance against D.

### **Intentional Infliction of Emotional Distress (IIED)**

IIED is when the defendant engages in (i) intentional (ii) extreme and outrageous conduct, (ii) causing severe emotional distress of the plaintiff.

Here, P will argue that D intentionally hired these rock bands to perform rock concerts and displayed extreme and outrageous conduct by doing so, which caused him severe emotional distress. However, D will likely argue that the venue is an open-air theater which hosts several different kinds of events, and that it was not extreme and outrageous conduct to hire rock bands to perform rock concerts at the venue, as that is its purpose. Additionally, D will argue that P suffered no severe emotional distress.

Therefore, P likely cannot reasonably assert a claim for IIED against D.

### **Trespass to Land**

Trespass to land is the (i) intentional (ii) entering the land of another (iii) without consent. There need not be knowledge that they are entering the land of another, and no damages are needed for a valid claim.

Here, the facts state that D went to P's house in an effort to find out if she might be able to relieve Pedro of some of his discomfort, she went to P's house to determine whether sound-deadening materials might be added. She forgot to tell Pedro that she was coming, and let herself into P's backyard. Although she did not cause any damage, she intentionally entered the land of another (P) without the consent to do so.

Therefore, P may reasonably assert a claim of trespass to land against D.

## **2. What remedies may Pedro reasonably seek?**

## LEGAL REMEDIES

### **General Damages**

General damages, also called non-economic damages, are damages that are not unique to the plaintiff such as mental anguish and pain and suffering.

Here, P will be entitled to general damages from D on any of the above claims, if successful.

### **Special Damages**

Special damages, also called economic damages, are unique to the plaintiff and involve lost wages, medical expenses, etc.

Here, if successful on his claims, P may be entitled to special damages from D.

### **Nominal Damages**

Nominal damages are damages to serve as vindication of the plaintiff's rights, with no harm involved.

Here, P may be awarded nominal damages if the court finds that he is not entitled to monetary damages.

## EQUITABLE REMEDIES

### **Duty to Mitigate Damages**

Generally, a defendant has a duty to mitigate damages to the fullest extent possible.

Here, the facts state that *in an effort* to find out if she might be able to relieve P of some of his discomfort, she went to P's house to determine whether sound-deadening materials might be added. This was an express attempt by D to mitigate damages, which will be looked at in a favorable manner by the court.

Therefore, D made a good faith attempt to mitigate damages.

### **Temporary Restraining Order (TRO)**

A TRO is an order by the court that is designed to maintain the status quo for 14 days or until a hearing is held on a preliminary injunction. In emergency situations, a TRO can be granted ex parte. The following elements below must be analyzed by the court when deciding whether or not to grant a TRO:

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*Likelihood of Irreparable Harm if TRO not Granted*

The court will determine whether there will be irreparable harm if the TRO is not granted.

Here, P can likely argue that the continued noise/vibrations add to his mental anguish and suffering, and that irreparable harm will continue if the TRO is not granted. D will argue that the nature of the outdoor venue is to host rock concerts and other events of the like. Due to the nature of the damages from the noise, however, P may be able to show he will suffer irreparable harm.

Therefore, this element is met.

*Monetary Damages Inadequate*

P must show that monetary damages are inadequate to make him whole. Here, there are little if any, recoverable monetary damages from this fact pattern.. Therefore, in order to have his rights vindicated, P must show that monetary damages are inadequate and that he really needs a court order to get D to stop hosting rock concerts.

Therefore, this element is met.

*Likelihood of Success on the Merits*

P has a number of potential claims for intentional torts against D, but the most likely claim to succeed are the private nuisance and the trespass to chattels claim. The private nuisance claim, however, is most likely to give rise for the need of a TRO or preliminary injunction. As discussed above, P will likely succeed on the private nuisance claim.

Therefore, this element has been met.

*Feasibility of Enforcement*

The court will look at the feasibility of enforcement of a TRO or injunction, and whether or not they can enforce an act or enforce someone from committing an act. A court is unlikely able to enforce a specific act to occur, because it closely resembles involuntary servitude.

Here, it would be difficult for the court to enforce D to prohibit rock concerts from occurring at the open-air venue. The facts state that the venue was there before Pedro recently purchased his house, and that its initial location was near the edge of the city. After time, city development expanded to include housing in the vicinity of the theater. Thus, it is clear that this venue is a staple on the community (having 200 employees as well), and it will be difficult to enforce this for a prolonged period, However, it can be enforced for 14 days as a TRO is designed to. The

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court will conduct a balancing test and balance the interests of both parties before making a decision.

Therefore, if the court weighs in favor of P, then this element will be met.

*No Defenses (Laches or Unclean Hands)*

There cannot be any other restitutionary defenses available such as laches or unclean hands. Laches is unduly delaying the proceedings, and unclean hands is when the plaintiff engages in unethical behavior.

There are no facts to indicate P unduly delayed any proceedings or acted in bad faith or engaged in any unethical behavior.

Therefore, there are no other restitutionary defenses available and this element has been met.

*Conclusion*

A TRO will likely be granted.

**Preliminary Injunction (PI)**

A PI is similar to a TRO, but the timing is different. Instead, a PI is designed to maintain the status quo until there is a full hearing based on the merits. The same elements are analyzed as under the TRO, and a PI cannot be granted ex parte.

*Likelihood of Irreparable Harm if PI not Granted*

Defined and discussed above. Element satisfied.

*Likelihood of Success on the Merits*

Defined and discussed above. Element satisfied.

*Feasibility of Enforcement*

Defined and discussed above. Element satisfied.

*No Defenses*

Defined and discussed above. Element satisfied.

**Permanent Injunction**

A permanent injunction is granted after a full trial is held on the merits, being the final measure

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of relief to be granted (if necessary). If the court finds that there is good cause, the court will issue a permanent injunction and stop D from hosting rock concerts in her venue. The same elements are analyzed, except "likelihood of success on the merits," because the trial has already occurred at this point.

*Likelihood of Irreparable Harm if Permanent Injunction not Granted*

Discussed above. P will argue that D need be prohibited from hosting a rock concert ever again. D will argue that this is unreasonable, and that if she is able to successfully mitigate P's damages, there is no need for a permanent injunction.

Therefore, this element is satisfied.

*Feasibility of Enforcement*

Defined and discussed above. Element satisfied.

*No Defenses*

Defined and discussed above. Element satisfied.

**Conclusion**

As previously discussed, P can seek monetary remedies such as (i) general damages, (ii) special damages and equitable remedies of (i) a TRO, (ii) a preliminary injunction, and (iii) a permanent injunction.

Question #3 Final Word Count = 1753

**END OF EXAM**