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1. What claims may Pedro reasonably assert against Diana?

Nuisance:

Nuisance is the intentional or negligent interference of another's quiet use and enjoyment of their property. A nuisance may be private or public in nature. When a nuisance is private, the plaintiff is entitled to remedies such as an injunction. However, if the nuisance is public in nature--extending to multiple potential plaintiffs, the cause of action usually falls to the city to regulate or enjoin the behavior. In order for a private citizen to bring a public nuisance claim, they must show a special injury in fact and unlike the kind experienced by the public writ large.

Here, Diana operated a large open-air theater that provides multi-use entertainment on weekdays for dance companies, and on weekend evenings for rock concerts. It was originally built on the edge of the city, but due to urban sprawl, there are now several homes nearby. Pedro recently moved to the area and has been experiencing "floor shake, noise, and vibration." Moreover, he was "horrified." However, after talking with neighbors, Pedro learned that others had already complained about noise and vibration, but could not obtain relief, and have decided to "live with it." Pedro may be able to show that his horror is the negligent infliction of emotional distress, therefore, he has a specialized harm. However, this argument is not compelling. He may also be able to show that the foundation of his home is being damaged if the "shake" he experiences is not like the shake his neighbors are experiencing. If the court does determine that his injuries are unlike the rest of the public, he may be able to seek an injunction.

Therefore, the noise caused by Diana's theater is a public nuisance and Pedro needs to show a special injury to recover.

Coming to the nuisance:

Coming to the nuisance is a defense to nuisance claims.

Diana may be able to assert that Pedro came to the nuisance because she had been operating for 30 years, and he just showed up recently and expects her to cease operations. The defense may succeed if Diana can show that Pedro knew about the nuisance and decided to show up anyway.

Therefore, this may be a viable defense for Diana.

Trespass to Land:

Trespass to land is the entering of the property of another without permission.

Here, Diana entered Pedro's property in order to take measurements, and determine whether sound-deadening materials might be added. Ordinarily, if an animal escapes into another's yard, say, the owner is able to enter the land of another to prevent further harm. Sound waves have entered Pedro's property, and Diana is attempting to do what she can to mitigate further damages by entering to take measurements. While the arguments are analogous, this argument is not compelling. Diana was there without permission.

Therefore, Diana committed a trespass to Pedro's land.

2. What remedies may Pedro reasonably seek?

Injunction:

An injunction is an equitable remedy to nuisance available when no legal remedy is sufficient. Injunctions may be either mandatory or negative. A mandatory injunction is the an order for the defendant to do something. Negative injunctions are generally favored over mandatory injunctions because a mandatory injunction requires the court's continued supervision to ensure enforcement. A negative injunction is an order to stop doing something. Legal remedies are insufficient when the damages are difficult to ascertain at the time of suit. In considering whether an injunction is appropriate, the court will weigh the benefit of the injunction on both sides, the cost to both parties, and any economic interest the public may have in the claim in order to come up with a solution.

Here, the damages are nebulous at this point and difficult to ascertain, it is likely the legal remedies are insufficient. Pedro will likely seek a negative injunction requiring Diana to close down here theater. It is noisy, and interferes with his quiet use and enjoyment of Pedro's home. If Pedro can show a special injury, he will likely be able to pursue the injunction in good faith. Diana has been operating her theater for 30 years, and it is noisy. However, the venue is open to local dance companies during the weekdays to provide classes, and it is also the focus of the city's cultural scene. Diana's theater employs about 200 people. These factors are important in determining whether it would be appropriate to close down the establishment altogether. From these facts, the city has a significant economic interest in keeping the theater open for both cultural tourism such as rock concerts, and employing residents. Diana has also taken steps to mitigate the impact by requiring concerts to end by 11:00 p.m. and setting maximum noise levels. Nevertheless, Pedro's sensitivity to these noise levels and vibrations have caused him some harm. The other neighbors have learned to live with the noise, but Pedro will not. It appears that the court could enjoin rock concerts by negative injunction if the dance companies do not interfere with his quiet use and enjoyment. However, Diana would be

forced to close, because she cannot operate without the rock concert revenue. That said, the most likely scenario would be that the court impose a mandatory injunction first to determine whether sound deadening materials on Pedro's property could be used to relieve him of his concerns. If so, the court would supervise enforcement, and if additional measures need to be taken, they could be. All told, it is unlikely that Pedro will be able to succeed in shutting down the theater entirely.

Therefore, the court will likely impose a mandatory injunction to try less cumbersome measures first and see whether Pedro is relieved before earnestly considering shutting down this thriving business.

Nominal Damages:

Nominal damages are a symbolic set of damages meant to pay something of value when a harm that does not create actual damages occurs. This is often the case in trespass claims where no damage has occurred.

Here, Diana trespassed to Pedro's land, but she did not cause any damage. Even in an emergency, if the trespass were excused, or if she was trying to prevent further damage that she caused, she would be liable for any damages she caused while on the land. Because she caused no damage, Pedro may be entitled to a symbolic sum of money to right the trespass.

Therefore, Pedro may be entitled to nominal damages.

Question #3 Final Word Count = 1073

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