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

Private Nuisance

Private nuisance is a substantial and unreasonable interference with the plaintiff's use and enjoyment of property. An interference is substantial if it would annoy or offend a reasonable person of the community. An interference is unreasonable if the severity of the plaintiff's harm outweighs the utility of the interference.

Substantial Interference

Here, P will argue that the noise and vibrations coming from the theater during rock concerts would annoy or offend a reasonable person of the community since it causes the floor to shake and prevents normal conversation. The fact that neighbors have already complained to D about the noise and vibration bolsters P's argument. However, D will point out the fact that the neighbors decided to live with it which suggests that the noise and vibrations do not annoy or offend a reasonable person of the community. However, this fact is not conclusive and thus, P can show substantial interference.

Unreasonable Interference

Here, P will argue that his harm outweighs the utility of the theater since it prevents P and his neighbors from using and enjoying their property without having the property disturbed by noises and vibrations. D will counterargue that P's harm is outweighed by the theater's utility as a 1) local venue 2) place of employment of 200 people and as a 3) focus of the city's cultural scene. However, the fact that P's home has experienced the physical effect of the noise and vibrations (shaking floors) likely tips the balance in P's favor since it makes P's harm more severe.

P Came to the Interference

D will argue that P's recovery is barred because P came to the interference since he knew about the theater when he moved into the house. However, P's knowledge of the theater's close proximity to his house will not negate his recovery since D still owes surrounding properties a duty not to cause them harm.

Mitigation

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D will argue that P's recovery is barred since she has already taken steps to mitigate the negative impact of the noise and vibrations by requiring all concerts to end by 11:00 p.m. and setting a maximum noise level. Although such mitigation may reduce D's culpability it will not, however, bar P's recovery.

### Conclusion

P can show that the noises and vibrations coming from the theater are a substantial and unreasonable interference with his use and enjoyment of property.

### Trespass

A trespass occurs when a defendant intentionally enters another person's land without permission from the owner. Trespass is a strict liability tort which means that the defendant is strictly liable the moment they commit trespass. Here, D let herself into P's house backyard without telling P that she was coming. Although D entered P's backyard to quickly take some measurements and leave, the tort was already committed the moment she entered P's backyard without his permission. Therefore, P is entitled to damages.

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

### Legal Damages

There are three types of legal damages in tort law 1) compensatory damages 2) nominal damages and 3) punitive damages.

#### Compensatory Damages

Compensatory damages compensate the plaintiff for their actual harm or loss. Compensatory damages are available for any tort. Here, P did not suffer any actual harm or loss. Therefore, P is not entitled to compensatory damages.

#### Nominal Damages

Nominal damages vindicate the plaintiff's rights when the plaintiff has not suffered actual harm or loss. Nominal damages are available when the defendant has acted intentionally. Here, D committed trespass when she entered P's backyard without P's permission. Since P has not suffered actual harm or loss and D acted intentionally, P is entitled nominal damages.

#### Punitive Damages

Punitive damages punish the defendant for acting evil, maliciously, or outrageously and deter the defendant and others from engaging in similar conduct. Here, there is no evidence to suggest that D acted evil, maliciously, or outrageously. Therefore, P is not entitled to punitive damages.

### Equitable Damages

#### Temporary Restraining Order

A temporary restraining order is a court order that sustains the status quo for 14 days or pending a preliminary injunction hearing. To obtain a temporary restraining order, the movant must show a likelihood of 1) irreparable harm and 2) success on the merits of a preliminary injunction

#### Irreparable Harm

P will argue that if the noises and vibrations continue to occur for 14 days, it will cause irreparable harm to his house since the interference causes his floors to shake. However, D will counterargue that the noises and vibrations will not cause irreparable harm to P's house since P and P's house have not actually suffered any harm or loss. As such, P cannot show a likelihood of irreparable harm to warrant a court order to prevent D from hosting concerts.

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**END OF EXAM**