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At issue here is Diana's open-air theater intervening with Pedro's use and enjoyment of his new home. When a tangible interruption to one's land is at issue we usually look at trespass to land, however when the disturbance is caused by something intangible like sound, vibration, smell, then we look at nuisance.

### **1. Pedro's claim against Diana:**

Nuisance is defined as an act by another causing continuous interruption to the level that is offensive for any ordinary/average person with average sensibilities and expectations from land, resulting in extreme interference with one's use and/or enjoyment of his land. There are two types of nuisance: (i) private and (ii) public. When the issue is a public nuisance, impacting the community at large and risking the health and quality of the community's lives, the individual cannot bring an action unless he is suffering from a special damage than everyone else in the community. It is important to understand if the nuisance is a repetitive or continuous act, or if it were a one-time action that bothered the landowner, because a one-time action probably will not be sufficient to support a cause of action for nuisance. It is understood that Pedro was extremely impacted ("horrified") by the noise and the vibrations. And it can also be supported by the facts that because the neighbors had such complaints before Pedro, his reaction to this interference is perhaps not because of his sensitivities, but because it objectively creates a nuisance. It is important to note here that "coming into nuisance" is never a good defense, and Diana, just because she has had this operation for 30 years, prevail against Pedro, because he bought the house knowing the theater existed, and was loud and unbearable indeed.

### **2. Remedies Pedro can seek:**

However, when it is private nuisance, one that is subject to the objectively extreme interference may bring an action against the other for damages (the loss of expected value one is getting from the land due to the interference), injunction (court to order the party causing the nuisance to refrain from doing whatever action is causing the interference or to do something to prevent the interference.) It is understood that Pedro informed Diana about his complaint, and they tried to come to a resolution together. Diana can assert that she is doing her best to mitigate the negative impacts of her activities in her own land by ending concerts at 11PM, and setting a maximum noise level, and that the rock

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concerts which are not continuous but repetitive are the only way she can maintain her land and living. Furthermore, Diana going into Pedro's backyard was in good intention to figure out a solution, however it was without notice to or consent from Pedro, which would deem Diana a trespasser at the time she was in Pedro's backyard. Due to the intent she was carrying when entering the land and that she left without and disturbance, she'd not be found liable for any additional damages, or torts related to her action.

Question #3 Final Word Count = 508

**END OF EXAM**