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Albert v. Nursery

Public Nuisance

An interference with health, safety, welfare, peace, convenience or other rights common to the general public. Usually claims are made by the state or municipality. An individual P may assert a claim for Public Nuisance only if his right is different in kind, not degree, from that of other members of the public. Factors to determine the existence of the nuisance include the type of neighborhood, zoning, and housing values in the area as well as the utility of having a nursery in a residential neighborhood versus the detriment of additional traffic and noise. Generally for a claim to be successful more than one of the factors must be met - none alone are conclusive to the determination.

Albert's claim for public nuisance that would lie against Gary's nursery is not different in kind from that of any other neighbor in the residential area. So his claim would likely fail.

Private Nuisance

A substantial and unreasonable interference with the possessor's right of use and enjoyment of his land.

Whether Albert's claim that the nursery's presence or its annual sale is a substantial and unreasonable interference will prevail will be determined by an evaluation as to whether the interference is substantial - highly offensive to a reasonable person - and unreasonable - that is, one that a normal neighbor would consider to be an interference - not just some grouchy person who is highly sensitive to the traffic and noise.

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Since the issue appears to be only the one day sale and its resulting additional traffic and noise, Gary can assert that his nursery is properly located and complies with zoning regulations and that, if he was there first - Albert by moving there 'came to the nuisance'. However, this argument will not necessarily prevail as a defense if the benefit to the city of residential housing in that area is a greater benefit to the community as a whole.

Gary v. Albert

Private Nuisance

Gary could definitely assert that Albert's act of bringing in a heavy metal band to deter his customers is a nuisance[*supra*] and is an intentional interference with his business advantage [*infra*]. The band would interfere with noise and other disturbance. Gary's best remedy would be an injunction - however, monetary damages might include loss of business.

Interference with Business Advantage

As stated above, the presence of the band is an intentional act on Al's part to interfere with Gary's business advantage. Gary need not prove loss of specific customers - but by comparison to previous year's sales for the one day event - he could show loss of business clientele (\$) and would be awarded these damages. Gary would need to show that Al acted intentionally [which appears to be the case from the facts] and with wrongful purpose [he was acting maliciously - willfully and to harm Gary]

Vicarious Liability for Band's Members Acts

As to the tort claims below against the Band - Al could be held vicariously liable for the band's acts since he hired them - independent contractor - if Gary could prove that Al negligently hired or negligently supervised the Band. Vicarious liability imputes negligent or intentional tortious acts of the independent contractor tortfeasor to the Principal.

Gary v. The Band

Trespass to Land

Physical invasion on the land of another without consent or privilege. If consent is given but the tortfeasor exceeds the scope of consent - it is a trespass to land.

The Band was not likely given consent to enter the nursery to destroy plants; thus a trespass to land has been committed. Being drunk is no excuse - if the band members volitionally came onto the property - which it appears they did.

Trespass to Chattel/Conversion

Damage or intermeddling with the chattel of another -

Damage of potted plants for sale is a trespass to chattel - if destruction or serious damage to the nursery's plants this act could also be a conversion. If conversion the band would be liable for the fair market value of the plants destroyed.

Disparagement

Disparagement or trade libel is the false statements that cause harm to the reputation of a

business and/or its owner in the business context. When band members told customers that Gary had stolen the plants that were being sold that day they committed disparagement.

Slander per se

The above act is also slander per se - a false statement that someone committed a crime. Some damages are presumed [humiliation, embarrassment].

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Gary could claim intentional infliction of emotional distress for the statements - if he suffers severe emotional distress from the extreme and outrageous conduct.

Defamation

as per above - slander per se is a form of defamation. Gary would allege defamation - false defamatory statement published to third person who understood it to be defamatory and damage to reputation. If Gary can prove these elements he would have a claim for defamation and damages for emotional suffering and other losses would apply.