

## PROPERTY II QUIZ: NUISANCE

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**NOTE:** Choose the one best answer to each question, applying the majority rule of property law. As on the MBE, you have 1.8 minutes/answer.

### Question 1

Paul and Debra owned neighboring properties, on which they lived. Paul got transferred to the night shift and began sleeping days. He discovered, however, that the noise of Debra's trampoline, which she enjoyed using in her backyard, kept him awake. Paul thus brought suit against Debra for nuisance. What result?

- (a) Paul will prevail because using a trampoline has much less social utility than sleeping for the night shift.
- (b) Paul will prevail because trampolines are not a customary use of property.
- (c) Paul will lose because he has not suffered a substantial and unusual interference with the enjoyment of his property.
- (d) Paul will lose because Debra did not act with any intent to bother him.

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1. This hopefully seemed like a pretty easy question. Common sense should at least have you leaning towards finding that there is no nuisance. Although they are not offered as answers, you might also have observed that Paul is in some sense coming the nuisance (in terms of his schedule change) and that he appears to be an especially sensitive plaintiff.
  - (a) is not the best answer because it does not seem likely that even under the R. (2d) Torts balancing test, to which the answer alludes, a court would find that Paul's use outweighs Debra's in importance; both recreation and rest constitute important social interests.
  - (b) is not the best answer both because trampolines are not that unusual and, at any rate, they do not make much more noise than other common outdoor activities, such as touch football or playing fetch with a dog.
  - (c) is the best answer both because it appears straightforwardly true under the traditional approach and also describes factors that would play a role in the R. (2d) Torts balancing test.
  - (d) is not the best answer because "intent" has a different and broader meaning in the law of nuisance, where a defendant need not intend to interfere with another's property rights to be liable for nuisance.