

Q 1 Remedies - Riley's 3 remedies from College

Permanent Injunctive relief – require College to:

Identifies specific actions – possibilities - full points must specify the nature of the relief

- Restrict fans and players from walking near and on her Riley's property
- Keep her garage from being blocked
- Build alternative path
- Build fence to keep fans and players off her property or confine them to other paths
- Take steps to keep fans and players from yelling obscenities and being loud
- Redirect lights - use alternatives to reduce glare on Riley's property
- Restrict hours of use of Field
- Post security during games and practices
- Provide waste receptacles on road
- Cordon off parking areas during events

Discretionary – may not get it - extraordinary relief - but courts often give in relation to nuisance claims

Applies test for injunctive relief

1) irreparable harm;

- land is unique and irreplaceable – often can get injunctive relief for nuisance because of this
- students have walked through her property, cursing and disrupting the private enjoyment of her land, and possibly harming her young children by using foul language.

2) no adequate remedy at law;

- Land is unique – money damages can't compensate for ongoing nuisance, sound, trash, obscene language, ongoing nuisance
- Monetary damages would not be adequate in preventing these actions from occurring again, or in allowing Riley to recover for the harm she has suffered.
- Multiplicity –recurring harm - would need to bring multiple law suits to recover damages after each event and she wants to prevent the harm from occurring in future

3) balance of the hardships against both parties is in Riley's favor;

- Riley has lived on and enjoyed her property long before the field was built and has no interest in moving her family from their home.
- Riley and family suffer from lack of sleep and associated problems; lose enjoyment of home
- College could build an alternate path to the field and potentially more parking so people would stay away from her property.
- College could restrict times when field used
- College might lose some fans who don't want to park farther away - minor harm to college

4) public interest favors this type of relief.

- People have a right to the private use and enjoyment of their land. Here, Riley's ability to use and enjoy her land has been tampered with each time that the students walk on her land to get to the field.
- neither party acted in bad faith
- public benefits from the events on Field, but they can still occur, with modifications

Preliminary injunctive relief – require College to:

- include specifics - see above - may add to not hold events until final trial
- discretionary to preserve status quo
- may be required to post a bond
- need for notice and hearing

Include legal analysis from above plus likelihood of success on the merits -

- Assume that College responsible for actions of fans and players - if so, looks likely that Riley can prove elements of nuisance, trespass, possibly negligence

Damages – to real and personal property - one way to do this -

Goal: Compensate - put her back in the position she would have been in but for harm to property

Assume College is liable for acts of students, athletes, fans

Definitely get damages for losses - amounts may vary - ideas

\$1,000.00 - to fix the wall (could argue cost to repair not economically feasible)

\$ 580.00 - to replace the bird sculpture (assuming can't get back)

\$ 800.00 - to fix the asphalt

\$ 400.00 - to replace the plants

\$ 250.00 - to repair the Buddha

\$2,100.00 - for the Buddha's diminution in value

Total \$5,130

May get: damages for loss of use, loss in reduced property values (but may be too speculative)

May get: expenses for hiring people to help with redoing plantings and taking away destroyed property

Remedies mutually exclusive: If got injunction to prevent future harm, then could not get damages for future harm. Could get damages for past incursions and injunction to prevent future harm.

Choice of remedies - identifies appropriate and effective remedies in context of client's goals - stay in the house, not jeopardize relationships with College and neighbor

- **permanent and preliminary injunctive relief** appropriate for ongoing trespass and nuisance; **damages** appropriate for harm to personal and real property; **restitution** for use of land for parking (possibly but weak); **restitution** for personal property but students have possession, arguably not College (bird sculpture); **declaratory judgment** - not clear how this would apply to facts

Notes: no points for specific performance or any contract damages (not suggested as relevant remedies in facts); no points for TRO analysis as facts specifically state that Riley does not want a TRO and nothing suggests the kind of emergency situation that would recommend a TRO as appropriate relief (she has already lived with the problem for one season).

Points lost for format, lack of page numbers, coherence and organization.

Q 2 Remedies - College's 3 best arguments against Riley's remedies

Arguments against injunctive relief:

-Riley has an adequate remedy at law - Riley is entitled to money damages to her property. No proof that harm would continue in the future - because injunctive relief is discretionary, College has some chance of succeeding on this. Value of land and trend for nuisance claims to be awarded some form of injunctive relief makes this more likely. Money damages would compensate Riley for putting up a sound and sight barrier.

-Balance of hardships favors the college- The revenue and goodwill generated to the College by having many loud and brightly lit public sports events and community businesses is greater than the harm to Riley. Riley and her family have lost some enjoyment of their property, but this is to be expected when living in a College town. Because of students' and fans' schedules, some events must be held in the evening and it is unpredictable to know when they will last beyond the usual playing time, such as with overtime. Having lower lights reduces visibility; decreased volume diminishes good experience of sports events. Could reduce alumni giving, decrease student applications and enrollments.

-Public interest College provides huge source of economic benefit to area residents. Employs many in community, others travel to see College sports event. The public benefits from having a source of entertainment such as college sporting events. Loud music and bright lights are all part of the experience. To make sports events available to fans, need to hold them at night. Source of good will and community pride in hosting College events in the town.

Arguments to reduce injunctive relief -

- Limit scope of relief - depending on specifics above, College could argue against permanent relief that presented a large burden, such as hiring staff to supervise fans and students during practices and events on the field

Equitable Defenses: problem with both these is that the College reassured residents that they would not be affected by Field - not true

Equitable Estoppel -

Riley knew that College land abutted her property - could assume College would use it in some way
Riley heard about College's plans and didn't do anything about them - should have investigated further about events, lighting, sound

Laches - Riley unreasonably delayed seeking injunctive relief causing College substantial prejudice

Totality of facts analysis - flexible doctrine - designed to encourage parties to act in good faith and prevent unfair advantage

- Riley had one season - fall - where she could have taken action and appears she did not -though facts mention College non-responsive, suggesting that she may have voiced her concerns earlier - if had not, delayed for 9 months - unclear whether this would be an unreasonable delay - she may have allowed a season for the College to work it out

Reduce damages - College could argue that it was not responsible for the actions of fans and students.

Other defenses/ways to prevent or limit Riley's remedies: no points for unclean hands,

unconscionability, for extra arguments; mitigation - weak - harm just occurred and mitigation relates to actions taking after harm occurred