ARIZONA STATE UNIVERSITY COLLEGE OF LAW
PROPERTY LAW, SPRING 2007
Professor Karjala
FINAL EXAMINATION
Part 1 (Essay Question)
MODEL ANSWER

Wednesday May 7, 2007 1:00 p.m.

Instructions

This examination consists of two parts. Part 1 is an essay problem that will account for roughly 1/3 of your final grade in the class. Part 2 is a set of 39 multiple choice questions that will account for roughly 2/3 of your final grade in the class. You have a total of 3-1/4 hours to complete both parts of the examination. You may work on the parts in any order and for whatever amount of the total time you feel will maximize your overall result.

You are permitted to have with you and to use during the examination the textbook, any class handouts (including printouts from the class web site), your class notes and outlines, and any other materials made by you personally or by your study group (not photocopied from printed materials). The materials we have studied constitute the legal authorities to which you are authorized to refer in answering the essay question. Do not rely on or cite as authorities cases, statutes, or other materials that we have not studied in class.

If answering Part 1 in longhand, please write legibly, double space, and on one side of a bluebook page only.

In answering this problem, do not begin with an elaborate discussion of the facts. Indeed, mere repetition of the facts without relevant legal doctrine will not get you any points at all. Neither, for that matter, will abstract discussion of legal doctrine that is not tied to the facts of the problem. Your analysis should weave relevant legal doctrine together with the facts to create a response that is directly relevant to what has been asked.

GOOD LUCK!
Problem

ABC Corporation operates a semiconductor manufacturing plant on land that was, when operations there were begun 20 years ago, on the outskirts of Town and there were no residential facilities nearby. Over the years ABC has become a major employer in the area, and ABC and its employees generate a significant amount of tax revenue for Town (through property taxes and sales taxes paid by ABC’s employees when they shop in the area). As Town grew, people began building personal residences near the ABC plant. At present there are twelve houses that directly abut the ABC land where the plant is located. Six of these houses are separated from south side of the plant by a sizable parking lot, used by ABC employees. There are two houses each on east, west, and north sides of the plant.

As a semiconductor manufacturer, ABC needs careful temperature control in all of its manufacturing facilities. Its original building used a set of independent air conditioning (A/C) units that more or less surrounded the building uniformly, with four units on each side of the building. When the neighboring houses were built, these units were in relatively good condition but they became increasingly noisy as time passed. All of the surrounding twelve houses were adversely affected by the noise, with the six houses on the east, west, and north sides suffering the most, because they are closest to the noise. Each of the twelve houses surrounding the plant would be worth about $500,000 but for the noise problem from ABC’s A/C units. As it is, the houses on the south side (where the noise is the least) are worth $400,000 each while those on the east, north, and west sides are worth $250,000 each. The residents of the houses got together with the management of ABC to see if there was a way ABC could reduce the racket.

Ultimately, ABC discovered that there was a new technology that would allow it to get rid of the old A/C units and consolidate all of its A/C equipment into a single unit on the north side of the building. After installation, the owners of homes on the east, south, and west sides of the ABC plant would have a significantly reduced level of noise – enough of a reduction that their homes would have the $500,000 value that each would have if there were no noise at all. However, things might be even worse than before for the two houses on the north side. One reason is that the single unit is much larger than the four old units that used to be on the north side. Another reason is that the new technology for noise reduction involves channeling or “focusing” the sound waves in a single direction, so that the noise is sharply reduced away from the “beam” of sound (that is, on the east, south, and west sides of the plant) but is increased in the direction of the “beam.” The new system would cost ABC about $1 million, and ABC knows of no way to keep the level of temperature control that it needs for its operations that would eliminate the noise problem for all of the houses surrounding its plant. ABC was willing to invest the $1 million in its new system, because it believed it would likely have to replace its A/C units, anyway, simply because of age. It was and remains unwilling, however, to pay for the reduction in value that the north-side homes would continue to suffer even after the installation. ABC is also unwilling to make any changes unless all twelve homeowners agree to absolve ABC from any further liability for nuisance.

Needless to say, the north-side homeowners refused agree to ABC’s demand unless they are compensated in some way. The east-, south-, and west-side homeowners had some discussions about ponying up some money to pay the north-side owners to agree, but they could not come to an agreement. Three of the south-side owners refused to contribute anything and the other three south-side owners offered only token amounts, on the order of $10,000. The east- and west-side owners were willing to go higher but not nearly high enough to fully compensate the north-side owners for the reduced value of their homes. In the meantime, the plant keeps roaring away to the detriment of all twelve homeowners.
Each of the homeowners now sues ABC for nuisance, all seeking an injunction prohibiting ABC from using its current A/C units. The suits are consolidated and the above facts are proved in a single trial, where all of the parties are before the court. An injunction will necessitate ABC’s closing the plant in question.

You are the judge in a jurisdiction that has no binding precedents on nuisance but gives respect to the decisions of courts from other states as well as to the principles of law set forth in the Restatement. Decide the case and write an opinion explaining your reasons. Do not repeat any of the facts except as necessary to show how specific facts relate to the legal argument. If you feel that a single issue resolves the case completely one way or the other, remember that your decision may be appealed and you should deal with the issues that arise in case you are reversed on what you thought was the single “decisive” issue.

**Model Answer**

ABC argues that the homeowners have “come to the nuisance” so that they are barred from seeking nuisance relief. Courts generally take the view that the law of nuisance does not consist of rigid rules. The *Spur* court (text p.660) expressly adopted this view on the issue of “coming to the nuisance.” Here, the plant was in place first and the homeowners came later. However, the nuisance was not as great when the homes were built. Rather, it has grown worse over time as the original A/C units have aged. Consequently, this court will not apply a black-letter rule but will rather look to all the facts and circumstances to find a resolution of the dispute that is reasonable.

In this case, there is no dispute that the noise from ABC’s plant interferes with the homeowners’ private use and enjoyment of their properties. The harm is substantial although essentially economic, according to the facts proved at trial. Not only do they have to listen to loud noise on a nearly continuous basis but the economic values of their properties has substantially decreased, in half the cases by at least 50%. In the *Estancias* case (p.646), which also involved a noisy A/C system, the court seemed to adopt a threshold approach to nuisance liability, that is, given that the harm to the neighbor was serious, an injunction would only be denied under the “stern rule of necessity.” That case did not undertake a cost/benefit analysis of whether the benefits of the noisy A/C system outweighed the costs to the complaining neighbor. Here, however, we cannot be so casual, because an injunction would require ABC to close its plant, which would impose a heavy cost on the entire community in lost jobs and revenues. The *Boomer* case (p.649) is highly relevant here: There the court refused to enjoin operations of a cement plant employing over 300 people where the harm to the surrounding neighbors from the pollution was “relatively small” (p.650). The *Boomer* court reached this conclusion even though New York purportedly followed the “threshold” approach to nuisance liability on which the *Estancias* court based an injunction. This court believes that an injunction in this case would be equivalent to throwing out the baby with the bath water and that the *Boomer* approach is a more nuanced and fairer way of addressing the problem. Commentators have pointed out that including community benefits in the cost/benefit calculation skews the analysis in favor of the creator of the nuisance because only the harm to the complainant is considered in the costs. However, at least in this case, we can take this concern into consideration when we determine the remedy to be afforded.

Before going further it is useful to analyze the facts before the court under the principles set forth in the Restatement. Here it is clear that ABC’s action in continuing to use its noisy A/C system is intentional, because ABC is well aware of the harm the system is causing the neighbors and has refused to abate unless the north-side neighbors basically absorb the loss of half the value
of their homes. Under the Restatement, then, ABC is liable in nuisance if its actions are “unreasonable.”

Under Restatement § 826, an invasion is unreasonable if (a) the gravity of the harm outweighs the utility of the conduct or (b) the harm is serious and the burden of compensating will not put ABC out of business. The Restatement then lists five factors to consider in determining the gravity of the harm and three factors in determining the utility of the conduct. Under § 827, we determine the gravity of the harm by looking to (a) the extent of the harm, (b) its character, (c) the social value of the use of the properties invaded, (d) the suitability of that use in that locality, and (e) the burden on the homeowner in avoiding the harm. Here the extent of the harm is heavy, although only twelve houses are affected: Half the houses have lost 50% of their value and the other half 20%. The character – noise causing loss of property values and, we may assume, physical and psychological annoyance on a continuous basis – is one that courts have generally taken seriously, as in *Estancias*. Our society attaches a high social value to single-family home life. Whether this location is well suited to single-family home life may be open to some question, however. Here, the homeowners did come to the area knowing that a large semiconductor operation was already there. While they may not have been able to predict the increased noise that would come from the A/C units, one might, in general, expect some sort of inconvenience to the ideal of quiet home ownership when living next to such a large industrial operation. As for avoidance of the harm by the homeowners, there seems to be little they can do at this point, either to avoid the noise itself or to avoid the drop in value of their properties.

As for utility, § 828 looks to (a) the social value of the conduct, (b) the suitability of the conduct to the locality, and (c) the impracticability of preventing the problem. Here there is no social value to noise as such, but there is large social value to having semiconductor manufacturing. Moreover, this plant started here at a time when no private homeowners were around. It would seem unfair to force the plant to shut down now that houses are in the area, especially given the large positive externalities that the plant generates for the community. As to suitability, it seems that the operation cannot continue without generating some noise – the only issue is who among the neighbors will be forced to suffer the noise. This also covers (c) of § 828, the impracticability of abating the problem.

The explicit Restatement factors thus leave us without a clear resolution. Here, fortunately, we have additional information that we can add to the Restatement analysis. We know that the east, west, and north-side homes have dropped in value by $250,000 each and the six south-side homes have lost $100,000 each. The total damages (not counting relocation costs, for simplicity) are thus $2,100,000. Do these costs outweigh the benefits under § 826(a)? The court does not have information before it that will permit putting an exact monetary value on the plant operations to the community as a whole. However, as in *Boomer*, this court believes that the total value is greater than that. ABC itself is willing to put $1 million into fixing the problem, and if this is done only the north-side homes will be damaged, for a total of $500,000. The benefits to the community from continued operation of the plant must exceed this amount, even though we do not have data on which to base a precise calculation.

Because the gravity of the harm does not outweigh the utility of the conduct, this court concludes that ABC’s actions are not unreasonable under § 826(a). That means that no injunction may issue, at least under the Restatement. However, the harm is serious and the question is whether damages in the amount of $500,000 would put ABC out of business under § 826(b). Again, this court does not have sufficient information before it to determine whether a $500,000 payment by ABC in addition to the $1 million it has already offered to pay for the new A/C system would “break the camel’s back” and put ABC out of business. If not, the
Restatement would allow this court – indeed would seem to demand that this court – order the installation of the new system (or issue an injunction on the existing system but conditioning its enforcement on whether ABC installs the new system) and pay the $500,000 in damages that would be suffered by the north-side homeowners. The burden of proof on the issue of whether payment of damages would put ABC out of business would seem to be on ABC, because ABC is the only one in a position to come up with the evidence relevant to the issue.

This court believes, however, that it can effect a resolution that is fairer than placing all of the cost on ABC, even if ABC can afford to pay the damages, or, alternatively, getting the benefits of ABC’s presence in the community while letting all of the losses from the noise fall on the homeowners. What we have here seems to be a classic case of “market failure,” where many of the homeowners on the east, south, and north sides are trying to “free ride” on the efforts of the others to abate the problem by paying off the north-side owners. Put another way, some south-side owners may be “holding out” in joining the payoff to the north-side owners in the expectation that the east- and west-side owners will be willing to pay more, because the noise is worse for them. It is reasonable that the south-side owners would want to pay less because they have lost less, but it is difficult for parties in these relationships to agree among themselves as to what is fair.

This court will attempt to do that. Here we must remember that these homeowners did come to the area with knowledge that a semiconductor plant was in full operation right next to their homes. While the noise has gotten worse since then, they are not entirely free from the obligation to lie in the beds that they themselves made. Following the approach of the court in *Spur*, this court can affirmatively find that a nuisance exists and must be abated through implementation of the new system that would remove the noise problem for ten of the twelve homes. ABC rightfully should bear the cost of replacing its old A/C system. However, it is not fair that the costs of the noise should now fall entirely on the north-side homeowners. Each of the east- and west-side homeowners will gain value in their properties of $250,000, for a total of $1,000,000. Each of the south-side homeowners will gain to the extent of $100,000, for a total of $600,000. It is fair to make each of the homeowners absorb the losses in proportion to the gains made from the new system, because the south-side homeowners presumably chose that side knowing that it was farther away from the plant than the homes on the other side. The north-side homeowners, of course, must also “contribute” their fair share of their losses. Consequently, each of the south-side homeowners must contribute 1/21 of the $500,000 loss suffered by the north-side homeowners (about $24,000 each) and each of the east- and west-side homeowners much contribute 2.5/21 of the loss (roughly $59,500). (The total paid to the north-side owners from the others on this basis will be roughly 24,000 x 6 + 59,500 x 4 = $382,000. The north-side owners themselves thus “contribute” $59,500 x 2 = $119,000, which brings us to the total of $500,000 but for rounding error.) [NOTE: Nobody lost any points on the exam for failing to get these arithmetic details right, but points were available for anyone who could explain the general concept of how damages should be divided - or any other general concept that made sense.] The north-side owners may choose now either to live with the noise or sell for the reduced value of their homes and move to a quieter location.

No evidence has been presented on the issue of past damages from the annoyance of the noise that has been occurring under the old system. Plaintiffs in this action are seeking only an injunction, so no award for past damages is appropriate.