

**Facts:**

Acme Whistles manufacturers dog whistles. Acme's main manufacturing facility is located in Catville. In its manufacturing facility, Acme also has a testing facility for its whistles. Acme uses the most effective and modern testing methods. Although Acme's facility cost over \$10,000,000.00 it was impossible to completely soundproof the testing area.

Bart, a dog breeder owns Santa's Little Helper and other dogs. He bought a parcel of property near Catville. Although the whistles cannot be heard by human ears, the whistles could be heard by Bart's dogs. Consequently, Santa's Little Help and the other dogs are constantly under stress. Bart hired Lisa to determine the cause of the dogs' stress. Lisa has discovered that the dogs are stressed because of Acme Whistles' testing facility.

Bart is really upset by Lisa's findings and decides to do something about it. One evening, Bart launches a water grenade from his property and hits the Acme Whistles' building. The Acme Whistles' building was not really damaged except for some paint chipping off.

**Questions:**

1. If Bart brings suit against Acme Whistles, will he prevail?
2. If Acme Whistles brings suit against Bart, will it prevail?

**Sample Answer:**

1. No. Bart is likely to bring a lawsuit against Acme Whistles for either: (1) nuisance; and (2) trespass to land. However, Bart will not recover because there has not been a substantial interference with his use or enjoyment of his land, nor has there been a trespass.

A private nuisance is intentional or otherwise actionable conduct that causes a substantial and unreasonable interference with the use and enjoyment of land. The interference must be more than trivial and it must be more than a reasonable person can be expected to tolerate. It is not a substantial interference if it merely interferes with a specialized use of the land. The fact pattern states that the testing does not bother humans, so it does not interfere with what a reasonable person can tolerate. The testing only disturbs Bart's dogs, but this affects his specialized use of her land. Thus, Acme Whistles' actions do not constitute a private nuisance.

All intentional torts require a volitional act with intent (i.e., intent to do the act, knowledge with substantial certainty that the act will occur, or transferred intent) to cause the act, which was in fact is the actual cause and proximate cause of the injury to the plaintiff. To establish an intentional tort, the Plaintiff

must prove a wrongful volitional act, done by the Defendant with intent, that causes injury to the Plaintiff. Trespass to land is an intentional physical invasion of another's land. Sound waves do not produce a physical invasion. Consequently, the facts do not support a basis for trespass to land.

2. Yes. As indicated above, Trespass to land is an intentional physical invasion of another's land. The Defendant does not necessarily have to enter the land. Here, Bart intentionally launched a water grenade at Acme Whistles' facility.

Acme Whistle must also demonstrate that it has a possessory interest in land. If it is able to do so, it is entitled to nominal, compensatory, and/or punitive damages. In the case at hand, Acme Whistle will likely only receive nominal damages because the damages were not that serious.