



Alison Monahan: Welcome to the Bar Exam Toolbox podcast. Today, we have another episode as part of our “Listen and Learn” series. This one is going to cover nuisance. Your Bar Exam Toolbox host today is Alison Monahan, and typically, I’m with Lee Burgess. We’re here to demystify the bar exam experience so that you can study effectively, stay sane, and hopefully pass and move on with your life. Together, we’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). I also run [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, which is the [Law School Toolbox podcast](#). If you have any questions, don’t hesitate to reach out to us. You can always reach us via the [contact form](#) on BarExamToolbox.com, and we would love to hear from you. With that, let’s get started.

Alison Monahan: Hello, and welcome back to the “Listen and Learn” series from the Bar Exam Toolbox podcast. Today, our topic is all about bright lights, loud noises, and bad smells. You’ve got it! We’re discussing nuisance.

Alison Monahan: A couple of important notes before we get started: First, nuisance is actually a cross-over topic on the bar exam. This means you might see the exact same rules in both your Torts and Property study materials. It’s easy to think of nuisance as a purely Property topic because it has to do with use and enjoyment of the land. And, you’d be correct in assuming that it is tested more frequently on Property essays than on Torts, because that’s true. But these rules can be triggered in Torts essays as well. And, we know from the [“baby bar exam” in California](#) that nuisance has been tested on purely Torts essays before – as recently as 2014. So, it’s entirely possible you could see this in a Torts bar essay as well.

Alison Monahan: Now, second point – the regular nuisance – the kind we’re discussing today – that’s different from attractive nuisance. Attractive nuisance is the name of the doctrine the involves making premises safe for trespassers who are children. This is also a Torts topic, but it comes up under Negligence. On an essay, attractive nuisance – assuming it’s tested – should be a sub-IRAC under “Standard of Care”. But we’re not delving into this one today, because it’s not as commonly tested. But you should review the attractive nuisance rule and make sure you can keep it separate, even though the name of the doctrine sounds similar.

Alison Monahan: Alright, so back to good old regular nuisance of the non-attractive variety. Nuisance is really about neighboring landowners doing annoying stuff that messes up your quality of life on your own land. You can have individual nuisance cases, such as me against my neighbor – that’s called “private



nuisance”. Or you can have group nuisance cases – that’s called “public nuisance”. That’s a situation where the community as a whole is mad about something annoying that’s going on.

Alison Monahan: On a bar essay, the kind of nuisance we’re talking about here should be written as a separate and distinct IRAC. In other words, it is not a sub-topic to anything else; but be aware it can be triggered by facts that also trigger similar issues. So, when you see nuisance, ask yourself if there’s anything going on that could lead you to discuss topics like lateral support, water rights, trespass to land, or landlord-tenant issues, such as the implied warranty of habitability or the implied covenant of good enjoyment. Again, these are all separate topics, but when you see a neighbor doing something that affects how you use or enjoy your land, that might give you facts to bring up some other issues as well.

Alison Monahan: Alright, enough of the preliminaries; let’s get right into the rules. For private nuisance, the general rule you should write down is this: A private nuisance is, one, a substantial and unreasonable interference; with, two, a person’s use or enjoyment of their property.

Alison Monahan: There are a couple of sub-rules as well that you should keep in mind and potentially write on your essay if they are triggered by the facts. Here is the first sub-rule: Nuisance is based on a reasonable person standard. The nuisance must be annoying, inconvenient, or offensive to a reasonable person.

Alison Monahan: Now, in a [previous episode about constructive eviction](#), we talked about a hypo from the California bar exam where a tenant is so annoyed and nauseated by the smell of her neighbor’s “all-cheese-all-the-time” diet that she complains to him. Would that be a nuisance? Even if she could meet all the elements to bring her cause of action, it would fail because reasonable people, first of all, can’t really even smell their neighbor’s cheese; and secondly, even if they could, it is super unlikely that the scent of stinky cheese could waft through the walls all the way into your apartment to the extent that a reasonable person would notice or be upset by it.

Alison Monahan: So, this is kind of the opposite of the “eggshell” plaintiff rule in negligence. Here, the plaintiff can’t be some hyper-sensitive Karen who complains to the landlord about every little thing. The court is only going to take seriously claims about things that would bother normal, regular, every-day people.

Alison Monahan: So far, we’ve been talking about private nuisance, which is a little more complex, as well as more highly-tested. However, let’s go through the rule for public nuisance. Here’s the rule you should write down: Public nuisance is, one,



an unreasonable interference; with, two, the health, safety, or property rights; of, three, a considerable number of people or the entire community or neighborhood; where, four, the plaintiffs can show they have suffered actual damages.

Alison Monahan: When it comes to nuisance, you've got a couple of options for recovery. A successful plaintiff could be awarded either money damages or an injunction. Often, to figure out which one to give, a court will "balance" the harm or risk to the plaintiff against the utility or benefit of the action by the neighbor.

Alison Monahan: Let's talk about an example. So, for example, if the noise from your power plant is super obnoxious, but that power plant is providing electricity to the entire town, I'm more likely to get money damages to ease my troubles than injunctive relief. Why? Well, if I got an injunction against a power supply company, they would have to shut down, and the whole town would lose power just because I'm annoyed – which is probably not a great solution.

Alison Monahan: When it comes to damages, these aren't hard and fast rules, and jurisdictions may vary. On the bar exam, you probably won't be given jurisdictional rules about this in the fact pattern, so it's your job to argue whatever facts you get. Here's the bottom line: You want to look at the bothersome action or condition, see how disruptive it is, and then on the other side, also consider whether that annoying thing is useful or beneficial to anyone else.

Alison Monahan: Now, we've also got a couple of defenses to talk about. The first is what's referred to as "coming to the nuisance". The second is "statutory compliance". Let's get into what these mean. Basically, if you knew there was a pen of screeching orangutans in your neighbor's yard and you moved into the house next door anyway, that would be an example of "coming to the nuisance". You can't sue the neighbor, because you brought this on yourself. You knew about it.

Alison Monahan: On the other hand, statutory compliance just means that the neighbor is following the rules that are in place – for example, only playing their music during daylight hours. So, you can't sue for that. So, write down those two defenses and remember them: coming to the nuisance, and statutory compliance.

Alison Monahan: Alright, that pretty much covers it for the rules you might need on an essay. Let's jump into some hypos to work through how these rules operate. Now, we usually try to use hypos from the actual bar exam, but the one we're going to talk about today is from the "baby bar" in California. The reason we're using it is



it's just that good. It sets up nuisance perfectly and gives us lots of facts to use. If you want to look it up and practice this one on your own, it's from the [First-Year Law Students' Exam from June 2014](#). Here's the fact pattern:

- Alison Monahan: "Twenty years ago, Flowers, Inc. built a large greenhouse facility in a rural area twenty miles outside of the city of Urbania at a cost of \$20 million. Flowers employs 20 workers. Because many of the plants grown in the greenhouse require more light than is naturally available, Flowers installed a system to provide needed light during normally dark periods.
- Alison Monahan: The light was extremely bright, casting a glow far beyond Flowers' property. Flowers was successful in its business, but became concerned as the suburban area around Urbania expanded and as houses were built closer and closer to its greenhouse. Flowers decided to put up signs all around its property warning prospective residents of the light created by the business.
- Alison Monahan: Harry saw Flowers' signs when he was thinking about buying one of the nearby residences, but figured that the light would not be that bad. He subsequently purchased and moved into an expensive new home, much like all the others in the area, on the street directly facing Flowers' greenhouse.
- Alison Monahan: After having lived there for three months, Harry decided he could not tolerate the light coming in his windows 24 hours a day. He has asked Flowers to turn off the lights, and Flowers has refused, arguing that its facility is completely up to industry standards, that there is no way to continue the business without the light, and that Harry knew about the issue when he bought the house.
- Alison Monahan: Can Harry bring a claim for nuisance against Flowers, Inc.?"
- Alison Monahan: Alright, let's start with private nuisance. What are the rule elements? We're looking for a substantial, and also unreasonable interference, first of all. The interference also has to affect someone's "use or enjoyment" of their property.
- Alison Monahan: So, we've got poor Harry here. What do you think? Can he bring a nuisance action? When you plan out an essay, the first step is to look at what the interference consisted of. Here, it was the lights from the greenhouses. Were the lights a substantial interference? Let's go back to the facts to find out.
- Alison Monahan: Now, the fact pattern said the lights were extremely bright and that they cast a glow far beyond Flowers' property. We also know the lights came in Harry's windows 24 hours a day. Okay, this sounds pretty substantial so far. On an



essay, you should extract each of these facts and then link them up to the rule elements about the interference being substantial.

Alison Monahan: Our next rule element is “unreasonable”. Remember, we’re only dealing with reasonable people here. Would a reasonable person in Harry’s situation be bothered? Harry could put up black-out curtains or maybe wear an eye mask when he sleeps. There are no facts about whether he was taking reasonable steps to help himself. However, is taking steps to make yourself less affected by the problem what this rule element requires? No. What the court will look at is whether a reasonable person would be bothered, and this light does seem pretty pervasive.

Alison Monahan: Harry could argue that since the neighborhood has been getting more and more residential lately, it is unreasonable for people living close to Flowers to have bright lights shining in their windows at all hours of the day and night. If he can show a reasonable person would hate the lights as much as he does, Harry could probably meet this element as well.

Alison Monahan: On the other hand, Harry’s house is “much like others in the area”. Do we have facts about those other people going bananas over the lights? No, but that information would be useful to know. So, on an essay, you can point that out. You should always point out any obvious holes in the facts. Here, you could say something like, “It is unclear whether all the other homeowners in the area are as affected as Harry. If they are not, that could show Harry’s annoyance is unreasonable because he is overly-sensitive. However, if other similarly-situated neighbors who are directly facing Flowers’ greenhouses, like Harry – or even those far beyond the property who are still in the glow cast by the greenhouse – also find the lights intolerable – that could bolster Harry’s claim.”

Alison Monahan: Now, how about our final element – Harry’s use or enjoyment of his property? Has this been affected? The fact pattern said that after only three months of living in his new house, Harry decided he could not tolerate the light coming in his windows 24 hours a day. The light bothered him enough that he made a complaint to Flowers, so this element is met.

Alison Monahan: Now, let’s look at possible defenses. You’ll recall that we have two options: coming to the nuisance, and statutory compliance. And there are facts to trigger both of these defenses. First, did Harry come to the nuisance? Let’s check the facts. Flowers built their greenhouse facility 20 years ago, so they were there before Harry moved in. Did Harry know about the problem before he decided to move there? Yes. The facts told us that Flowers was concerned about their lights affecting prospective homebuyers and they decided to put up signs warning



these buyers of the light created by the business. So, that would give him constructive notice at least.

Alison Monahan: But the facts even go one step further by telling us that Harry saw the signs when he was looking at houses, so he had actual notice as well. He definitely knew about the potential problem before buying this new house. Did he care? Not really. He thought the lights couldn't possibly be that bad. Well, as it turns out, he was wrong.

Alison Monahan: So, what do you think? Did Harry come to the nuisance? Yes, he did. The problem was there, he walked up, noticed there was a problem, and decided to buy his expensive house there anyway. So, Flowers could successfully bring this defense against him.

Alison Monahan: Is there anything to support a defense of statutory compliance? Well, there was one small fact about this. Did you pick up on it? When Harry complained to Flowers, one of the things they fired back in their response was that the facility is completely up to industry standards. If this is true – and we have to assume it's true because it's in the fact pattern – that means that Flowers could also bring this as a defense. They were complying with the applicable statutes for their industry, so it's not their problem Harry can't stand the lights. Sorry, Harry.

Alison Monahan: Finally, let's discuss recovery options. We know Harry could probably bring a strong claim. We also know Flowers has two very strong defenses. Flowers would probably win. Does that mean we should skip over the damages for Harry? No, never. Not on the bar exam! If Harry has even the possibility of recovering, you should look at what those remedies might be.

Alison Monahan: Remember, for nuisance, we have two options: money damages, and an injunction. Earlier, we discussed courts being less willing to enjoin nuisance-creators who are doing something useful for the community. This is where you could balance harm to Harry vs. utility to the city of Urbana. What do you think? We know what the harm to Harry is. Do you think Flowers is doing anything particularly helpful that should outweigh that? Again, we need to go back to the facts to find out.

Alison Monahan: And something here to note: A lot of the facts you needed actually looked like background, so they were easy to miss on your first read. This is why, on the bar exam, you should always read the fact pattern once through like a story, and then a second time to extract individual facts and figure out why each one matters. So, what do we know about Flowers? We know it was a rural community; Flowers employs 20 workers; Flowers is a successful business.



- Alison Monahan: Another thing to keep in mind: Were these facts all grouped together in the same part of the fact pattern? No. Some came from the first line, some were buried in the middle, and some were at the end. That’s why you really need to cull through the full fact pattern and ask yourself, “Which facts can I find that might match up to the rule element I’m using?” Again, this needs to happen when you plan your essay. It’s not an on-the-fly activity you can do effectively while you’re writing.
- Alison Monahan: Okay, so how can we use these three individual facts? Well, Flowers was creating jobs. It employed 20 people from a rural community. That means it was helping to support 20 households in a place where jobs might have been harder to find than in a bigger city. Also, since it was successful, it was bringing in money to the community and the economy. On an essay, you should use these facts about the utility of the activity as compared to the annoyance of it.
- Alison Monahan: So, that wraps up our discussion of private nuisance. What about public nuisance? Could Harry make a claim for this? Well, let’s think back to the rule. We need an unreasonable interference; we also need that interference to affect the health, safety, or property rights of the community; and Harry would need to show actual damages.
- Alison Monahan: The nice part about discussing public vs. private nuisance is that the first element of the two rules is almost exactly the same. For private nuisance, we’re looking at “substantial and unreasonable” interference. For public nuisance, we only need “unreasonable” interference.
- Alison Monahan: On an essay, you could easily say “see above”, because any interference that meets the higher hurdle of being substantial and unreasonable already checks off the rule element of unreasonable. On the bar, if an issue is exactly the same, you shouldn’t repeat the analysis; just say “see above”.
- Alison Monahan: What about affecting the health, safety, or property rights of the community? Can Harry show this element is met? Let’s go back to the facts. We don’t have as much to work with for public nuisance. On the bar exam, that would tell us this is probably a smaller issue, which means it’s not going to be worth as many points. So, you shouldn’t spend as much time on it.
- Alison Monahan: Okay, so we know there are other houses in the area that have lights shining into their windows. We also know that Urbania has been expanding and building houses closer and closer to the greenhouses. Do we have any facts about other neighbors or community members being upset by the lights



though? No. Are the lights affecting anyone's health? Maybe bright lights on 24/7 could make it hard to sleep, and of course, everyone needs to sleep to maintain good health. But do we really have facts about that? No. Any facts about safety? No. Property rights? No.

Alison Monahan: The most you could say here is something about how there are other houses close to Flowers, but it is unclear whether the people living there have been affected by the lights. It is possible bright lights shining in their windows 24/7 is affecting their health by, for example, making it difficult to sleep. However, without more information, Harry would not be able to bring a claim for public nuisance because we just don't know if the other community members have been affected.

Alison Monahan: See what I mean about this fact pattern being a gold mine for nuisance? We pretty much covered everything with one hypo. Now, normally, we don't recommend that students use First-Year Law Students' Exam questions to prepare for the bar. The reason is because they are generally less complicated and more limited in scope. So, if you want to practice some nuisance analysis on real bar questions, you can try out the California Property essays from [February 2018](#), [2012](#), or [2007](#).

Alison Monahan: And with that, we're out of time! If you enjoyed this episode of the Bar Exam Toolbox podcast, please take a second to leave a review or rating on your favorite listening app. We would really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to Lee or Alison at lee@barexamtoolbox.com or alison@barexamtoolbox.com. Or you can always contact us via our website [contact form](#) at BarExamToolbox.com. Thanks for listening, and we'll talk soon!

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[First-Year Law Students' Examination](#)

[California First-Year Law Students' Examination, June 2014](#)

[California Bar Examination – Essay Questions and Selected Answers, February 2007](#)

[California Bar Examination – Essay Questions and Selected Answers, February 2012](#)

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