

## TORTS II COURSE REVIEW EXERCISE

Prof. Bell

**NOTE:** During our course review, during our last class, we will first discuss the questions (if any) that you have sent to be beforehand (with your tentative answers, naturally). We will then do some multiple choice questions. Lastly, we will analyze some of the issues raised by the facts of the case quoted below. After our class discussion, you can read the reported case for the court's own analysis. Unfortunately, the opinion does not resolve several issues; still, it offers a nice set of facts for you to consider.

**Peterson v. Jansen, 2009 Tex. App. LEXIS 994 (Ct. App. Tx. 2009)**

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### I. FACTUAL AND PROCEDURAL BACKGROUND

The Jansens purchased a home in a golf-course community in 2004. Peterson lived two houses down from the Jansens. Dale Farber lived between the Jansens and Peterson. The Jansens', Peterson's, and Farber's yards backed to the golf course and contained an eight-foot utility and drainage easement running along the golf-course side of the properties.

Beginning in late 2004, the Jansens spent over \$ 70,000 on home improvements, installing a swimming pool and landscaping their yard. Peterson called the constable on at least two occasions in relation to the work the Jansens were doing on their home. Peterson also complained about a privacy fence the Jansens erected to prevent Peterson from staring across Farber's yard and into the Jansens' yard. Before the Jansens installed the privacy fence, Peterson had interrupted a conversation between James Jansen and Farber by shouting obscenities at Jansen. According to the Jansens, Peterson also let his large dog antagonize their two smaller dogs.

The Jansens' backyard was subject to flooding; and, in the process of improving the backyard, the Jansens investigated a way of diverting the water underground. Eventually, they contracted with Ben Dittman to install a six-inch PVC pipe under the utility and

drainage easement. The pipe was to run under the easement on Jansens', Farber's, and Peterson's properties. Dittman was responsible for obtaining the necessary permits and approvals.

Farber gave James Jansen oral approval to run the pipe through the easement on Farber's property. James also discussed the pipe with Peterson. According to James, Peterson was concerned about the pipe backing up and wanted James to sign a statement accepting responsibility for any problems or liabilities with the pipe.

Six days later, when Peterson had not heard from James, Peterson sent James a "Cease & Desist Order." The same day, James attempted to hand-deliver a signed statement to Peterson. Peterson refused to take it, saying "You're too late. You've been served."

Dittman also met with Peterson. According to Dittman, Peterson was agreeable to the drain work and also wanted Dittman's company to do drain work for him. Subsequently, however, Peterson called Dittman "just kind of out of the blue, and began to cuss me out and tell me that I didn't know who he was and that I didn't know what he was going to be able to do to me and all this other stuff."

Work began on the pipe. At one point, James Jansen observed Peterson trying to dig it up. Peterson placed a sign where golfers could see it. Between a half dozen and a dozen people mentioned the sign to the Jansens. The sign read, "Mr. Jansen's encroachment. 6" PVC Pipe."

Peterson stood on his porch and in Farber's yard and screamed obscenities at James. Peterson stood behind the Jansens' fence and took photographs into the Jansens' yard and home. According to James, it was "creepy . . . kind of like [Peterson's] stalking us at times." James stopped his membership in the Men's Golf Association because he did not want to be in an organization that supported Peterson and did not want to be placed in a position of having to golf with him.

According to Vikki Jansen, Peterson would stand at the back of their fence with his dog, which acted aggressively toward the Jansens' dogs. Vikki no longer left her dogs unsupervised in the backyard. As a result of Peterson's taking photographs into her house, Vikki kept her blinds closed and no longer enjoyed the view of the golf course. Vikki stopped playing with the Ladies Golf Association after Peterson complained to the police about a group with whom Vikki was riding to the club house after an evening golf game.

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