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**1. Was the state court's denial of Diane's (D) neighbors application of a permanent injunction correct?** 

**Declaratory judgment in State Court** 

D did not complete the construction of the dam, and therefore, the neighbors were not yet harmed. Therefore the case was not ripe yet. However, even though the federal courts cannot issue declaratory judgments, the state court can do so. Therefore there is no problem with state court reviewing the case.

**Injunction generally**

The permanent injunction is an equitable relief, which is granted in situations where the plaintiff has no adequate remedy at law  this situation, the court should have denied the injunction, if the cause of action was not established, or if a legal remedy was available even if the cause of action for nuisance or the taking was established 

Nuisance can be of two forms - public nuisance and private nuisance. Aside from property rights issues, this is a tort cause of action and it can be based on the defendant's intentional, negligent or reckless conduct. Here, it appears that the cause of action will be for intentional nuisance. 

**Public Nuisance**

Public Nuisance is substantial and unreasonable interference with the rights attributable to the general public, i.e. the public health, public safety, and public welfare. The action for private nuisance can be brought on behalf of the general public by Attorney General, and the State will obtain the judgment.


In order for a private person to sue under public nuisance cause of action, the private individual must suffer an injury that is different in kind than that of the general public.


In this case, the neighbors brought the action before the dam was completed the theory being that the dam unreasonably and substantially interfered with the rights applicable to the general public, because it denied them the access to the water. This claim does not constitute harm different in kind, because it was within the foreseeable consequence of the D's actions, i.e. preserving and collecting the water. Therefore, the public nuisance cannot be brought by the neighbors, because the collection of the water through the dam does not effect the public's safety (absent the allegation that the dam was not constructed property), does not interfere with the public health or public welfare (because there are no allegations that the dam created health hazard or completely deprived the water to the neighbors).

Even if the dam was constructed in a manner to pose substantial safety or health issue, the cause of action could be brought only by the state official. therefore, there was no cause of action for the public nuisance.

#### Private Nuisance

Neighbors can also claim private nuisance. Private nuisance is substantial and unreasonable interference with the use and enjoyment of the property of another. Here, the claim would be that D's construction deprived the neighbors the access to the much needed water, and thus unreasonably interfered with their rights, because the intent was to build a pond for the children to have it in summer camp. Furthermore, the interference was substantial because it deprived their usual and natural use of the water.


A remedy for private nuisance can be an self held or abatement, injunction, or suit in damages 

Permanent Injunction 


Permanent injunction is an equitable remedy, which is afforded to the plaintiff who proves that there is (1) no legal remedy available because damages would be speculative or not possible to compute, (2) Irreparable harm will result, if injunction is not granted. The court will balance the respective hardships of the parties and determine the relevant positions of the parties if the injunction is granted or denied.

no legal remedy 

The neighbors must establish that there is no remedy at law, i.e. the damages are not proper either because it is impossible to compute them, or no matter how much money is awarded the harm will not be cured.

Here, the harm complained of is lack of water. The neighbors did not show that there are no alternate means of getting water, i.e. drilling new water wells, or transporting water from other places. Alternatively the neighbors could simply enter into some agreement with D to have water diverted in specified quantities for neighbors needs. Thus, the damages would be computed based on the costs of obtaining water from other sources, i.e. drilling, or transporting. Therefore, the legal remedy was available 

If the court will find that there were no legal remedies available. P must also prove that there was an irreparable harm.

irreparable harm 

Neighbors will not be able to show irreparable harm, because there are no facts showing that the water was not available from other sources or could not be obtained through reasonable costs. Therefore, there is no irreparable harm.

Balancing

The court would balance the hardships on the defendant and the plaintiff and decide whether on balance the plaintiff's burden is much larger than that of the defendant. The court could look in factors like the social utility of the defendant's conduct, the type of harm and the rights involved.

Here, D wanted to create summercamp for economically disadvantaged children, and the construction of the dam was almost complete. The defendant's hardship would be to remove the dam and forget about the plans for the summer camp.

The plaintiff's harm would be the requirement to find other source of water supply, i.e. by drilling or by arranging transported water supply, or agreement with the defendant to provide water in limited quantities.

Because there were no facts showing that there were no alternatives for obtaining water in the locality, and because of the fact that the plaintiffs waited six months to bring the lawsuit when the dam was almost complete and the defendant expended large sums of money into the project, on balance the harm of the defendant was substantially larger than the burden on the plaintiffs. Therefore, the court was proper in denying the permanent injunction.

#### Taking under Constitution

Taking occurs where the state actor either physically occupies the property, or deprives the plaintiff almost all economic use of the property. Taking can be done by either eminent domain (state brings action to take the property), by inverse condemnation (the plaintiff files to have the state pay for taking), or by regulation.

#### State Action

State action is required for taking. Here, D would claim that there was no state action because D was a private party. Generally, the private party can be a state action if engaged in activity that is traditionally deemed to be government

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function, or if the state is excessively involved with the activity - entanglement.

Here, there are no facts suggesting that the state was involved in the project, and the Supreme Court had stated that the government function is available in limited cases of running an election or a town. Therefore, under the facts of this case, D is not a state actor, and therefore, there was no taking.


Thus, the court properly denied the permanent injunction application of the neighbors.

**2. Was the federal court's denial of Paul's (P) application for permanent injunction correct?**


Res Judicata

The preclusive effect of a judgment is based on the notion of full and final judgment on merits 

On Merits

A judgment, which was based on the merits of the case, i.e. where the elements of the causes of action were not established or a valid defense precluded the recovery on the cause of action. Here, it was stated that the court had entered the judgment on merits 

Full and final

The judgment was full and final, it was not an interlocutory decree . The plaintiff Paul (P) might argue that the judgment was not final because they did not appeal the case. However, the fact that the parties did not file an appeal does not change the finality of the judgment.

Same parties

The preclusive effect of the judgment is based on the notion that if the parties were afforded their right to litigate, any decision (final and on merits) between them should be binding.

Here, P was a party to the prior claim, and D was the party to the prior claim.

Therefore, the judgment is res-judicata and will preclude P's subsequent suit in the federal law.

### **3. Did Lawyer commit any ethical violations when she called 911?**

#### **Breach of Duty of Confidentiality**

The lawyer has a duty of confidentiality to the client. The duty of confidentiality requires that the lawyer not disclose any information learned during the process of representing the client from any source, not just from the plaintiff without client consent. California Requires actual consent.

However, the lawyer may disclose to prevent serious injury (CA and ABA), or fraud (ABA only), suit by client, court order.

Here, Lawyer learned that the client intended to "... take care of Diane... and the dam..." Assuming that the lawyer was reasonable in concluding that P would injure D personally, or destroy the dam, under California rules L was justified to make the call, because L tried to dissuade P not to commit the crime, but could not do so. Thus, L was justified under both ABA and California rules.


#### **Breach of Duty of Loyalty**

The lawyer cannot have own interests in the litigation. If the lawyer has an interest that substantially impairs his ability to represent the client effectively, the lawyer must disclose the conflict, obtain the client consent, and if the consent is reasonable, then pursue representation, or withdraw.

Here, L did not have personal conflict, even though in the eye of P it would be difference. However, L was justified to interfere in the manner stated, because L did not act from her own interest, but in the interest of the public and justice.

Breach of Duty of Fairness 

The lawyer must act fair in all cases, involving personal matters. Here P would argue that L was not fair to him, because L's disclosure resulted in criminal prosecution. However, the lawyer's conduct was fair in light of the duty to disclose client's intention to injure someone. Thus, there is no breach of duty of fairness.

Breach of Duty of Competence 

P would argue that L breach her duty of competence, because she failed to zealously represent P.

The lawyer has a duty to be competent, i.e. have knowledge and experience to represent the client. As part of this duty, the lawyer must zealously represent the client's interest.

Here, P would argue that L did not exercise her duty because instead of representing him, L facilitated P's capture and indictment. This claim is unsubstantiated because L acted in the interests of justice and it was not a breach on duty of confidentiality as discussed above. 