# D Magazine: Museum Light Reflection

The museum could attempt to bring a private nuisance claim against the developer of the new building. Broadly speaking, a nuisance is a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to a person of ordinary sensibilities. *Schneider Nat. Carriers, Inc. v. Bates*, 147 S.W.3d 264, 269 (Tex. 2004); *Barnes v. Mathis*, 353 S.W.3d 760, 763 (Tex. 2011). “[F]oul odors, dust, noise, and bright lights—if sufficiently extreme—may constitute a nuisance.” *C.C. Carlton Indus., Ltd. v. Blanchard*, 311 S.W.3d 654, 659 (Tex. App.—Austin 2010, no pet.)

Examples of causes of actions for nuisance include: structural damage caused by vibration associated with constructing a drainage culvert, *C.C. Carlton Indus., Ltd. v. Blanchard*, 311 S.W.3d 654 (Tex. App.—Austin 2010, no pet.); flooding caused by an embankment that diverted natural surface water onto the plaintiff’s low-lying property, *City of Princeton v. Abbott*, 792 S.W.2d 161, 163 (Tex. App.—Dallas 1990, writ denied); excessive noise caused by a newly constructed commercial air conditioning unit, *Estancias Dallas Corp. v. Schultz*, 500 S.W.2d 217, 219 (Tex. Civ. App.—Beaumont 1973, writ ref'd n.r.e.); and foul and obnoxious odors omitted by a soap manufacturing facility, *Soap Corp. of Am. v. Balis*, 223 S.W.2d 957, 959 (Tex. Civ. App.—Fort Worth 1949, writ ref'd n.r.e.).

The elements of a cause of action for private nuisance are:

1. The plaintiff had a private interest in land;
2. The defendant interfered with or invaded the plaintiff’s interest in the land by conduct that was:
	1. negligent;
	2. intentional and unreasonable; or
	3. abnormal and out of place in its surroundings.
3. The defendant’s conduct resulted in a condition that substantially interfered with the plaintiff’s use and enjoyment of the land;
4. The nuisance caused an injury to the plaintiff.

It is unlikely that the museum would prevail on a nuisance claim because of the difficulty it would have in proving the second element. The developer was probably not negligent in constructing the new building because it did not owe a legal duty to the museum. Additionally, even if the developer’s conduct was intentional, in that the developer may have known that the building would reflect light into the museum, commercial development is not an unreasonable activity. Finally, commercial construction would not qualify as abnormal and out of place in the surroundings. Therefore, even though the museum could likely prove that the new building has substantially interfered with the use and enjoyment of its property, its claim for nuisance would likely fail.

Additionally, the owner of the offending structure would likely attempt to argue that the museum is ultra-sensitive and that the light reflection would not cause an unreasonable discomfort or annoyance to a person of ordinary sensibilities. Nuisance law employs an objective standard and therefore does not protect the interests of an ultra-sensitive property owner. For example, in *Lynn Open Air Theatre, Inc. v. Sea Crest Cadillac-Pontiac, Inc*., 1 Mass. App. Ct. 186, 294 N.E.2d 473 (Mass. App. Ct. 1973), the court held that a corporation’s use of floodlights in a highly commercial, heavily lighted neighborhood did not constitute a nuisance even though the lights interfered with screen projection at a nearby drive-in movie theater. Accordingly, the defendant was not required to restrict its use of lights in order to accommodate the special sensitivity of the theater.

If the museum somehow managed to prevail on a nuisance claim, the next issue would be what type of remedy is the museum entitled to. Even if an activity is deemed a nuisance, courts will balance the equities of the case before issuing an injunction. *Estancias Dallas Corp.*, 500 S.W.2d at 219–22. This requires the court to balance the public benefit generated by the defendant’s activities and with the harm caused to the plaintiff. If the public benefit outweighs the private harm, the plaintiff will only be entitled to monetary damages, and the defendant will be able to continue the nuisance producing activity.