

# PROPERTY PRACTICE QUESTIONS

## QUESTION 18

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**Topic: Real Property**

**Sub-topics: Covenants and Nuisance**

**Type: Essay**

**Difficulty: Easy**

**Time: 30 minutes**

Brian and Richard lived next door to each other in a nice and new residential neighborhood in Houston, Texas. Both Brian and Richard purchased their homes from the same developer for \$250,000 each. Both of their deeds contained the following clause: “Buyers and their heirs and assigns hereby covenant that they will not keep any outdoor animals except for dogs and cats on their land, as it will lower the neighborhood property value.” All the people in that neighborhood bought their property from the same developer and also covenanted not to have outdoor animals on their land.

Several years went by and the neighborhood grew. Brian and some other people acquired peacocks and kept them in their front yard. Neither the homeowners’ association nor any of the neighbors complained. Seeing that no one said anything about the peacocks, Richard bought five pigs and penned them in his front yard. The pigs’ loud snorting deprived Brian of sleep every morning and consequently he suffered recurring migraines. The pig manure smell was so unbearable that Brian always had to keep his windows closed, and the neighborhood walkers took longer routes to avoid walking by Richard’s house.

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One day Brian decided that he could no longer stand the smell and the noise of the pigs and filed a suit against Richard claiming a breach of covenant and nuisance. Richard's defense is that the covenant was invalid to begin with, or in the alternative that it has terminated. Richard also claims that there is no nuisance because pigs are useful animals.

Discuss all issues pertinent to the case. Who should win and why?