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I. PAUL'S INTENTIONAL TORT CLAIMS

A. Intentional Torts

Intentional torts are torts that are knowingly committed by the defendant. The defendant may not have intended the harm, but did intend the conduct which caused the harm.

Here, Paul will be claiming intentional torts so his causes of actions are limited to that. Though negligence is a possible claim, it is not an intentional tort, and so a negligence cause of action and the remedies for negligence will not be discussed here.

B. Private Nuisance

In order to prove private nuisance, a plaintiff must show (1) that the defendant intended to cause the nuisance, (2) the nuisance substantially interfered with the plaintiff's use and enjoyment of the land, (3) the nuisance is continuous, and (4) the nuisance was so unreasonable that no one should be subjected to it. Lastly, the court considers the balancing aspect to nuisance actions. If there is a substantial benefit to the nuisance, the defendant would not be ordered to stop, but rather the defendant will be required to pay for the continuing nuisance.

In this case, Paul (P) will claim that Doug (D), intended to cause then uisnace because he fell tres and brought them across P's property. Under the facts, D intentionally dumped the tress onto P's lot. P can show interference because the trees are on the lot. Even though P cannot see them, the trees blocked the stream's natural flow, thus interfering with P's use and enjoyment of the land. The trees will remain on P's property until someone pays to remove them, so until then the nuisance is ongoing and continuous. P will claim that he should not have to be subjected to such a nuisance because the felled trees were waste that were placed on his property as a dump. There is not benefit to keeping these

trees on the property so a court will not require these trees to remain on the property.

C. Trespass

A trespass is the physical invasion of real property. In order for a plaintiff to prevail in a trespass case, he must show (1) there was a physical invasion, (2) of real property. It should be noted that a defendant in a trespass case need not know that he was trespassing, only that he intended to enter the land.

Here, P will claim that D trespassed onto his land by going onto his lot and leaving trees on his land. D, on the other hand, will argue that he was entitled to enter the land because he specifically asked P if he can "cut across Paul's lot [to get] to the mill," and P knowingly agreed. However, P will rebut and argue that he exceeded the scope of his privilege. P will claim that he gave D permission to temporarily use his lot to pass through it, not engage in a continuing trespass by going onto his land and leaving D's garbage (trees) in a place on his lot. D's actions of trying to conceal his garbage by placing them on P's lot where he was unlikely to see it is also suspicious. This physical trespass was unprivileged and a court will most likely find that D did in fact trespass on P's land by leaving garbage on it.

D. Trespass to Chattels

Trespass to chattels occurs when there is an intentional interference with the plaintiff's use of personal property.

P will claim that D committed a trespass to chattels when he left the trees on his property. By leaving the trees, P's motorcycle and garage was damaged. Under the facts it is not clear if the garage was connected to the house as "real property" or a small shed that holds P's bicycle. Presuming that the garage is a shelter for the bicycle, P will argue that his personal property was damaged by D due to trespass.

D will argue that he should not be liable under this theory because he did not intentionally interfere with the garage. P will have difficulty proving that D intended to interfere with the use of his garage and motorcycle, even though they were caused by the trespass described above.

II. PAUL'S POTENTIAL REMEDIES

A. Restitutionary

Restitutionary remedies are awarded based on the unjust enrichment of the defendant. Restitutionary damages should be, and are usually specific and certain to a reasonable degree.

Paul will most likely seek restitutionary damages. In this case, D made it known to P that he was clearing his land in order to build a house for himself. D was clearly intended to benefit himself by removing the trees. P will argue that D's leaving the trees on his land instead of paying for them to be removed was done unreasonably and unjustly. As discussed above, D placed these trees in a place that he believed P would not see them, thus concealing the fact that he dumped the trees there. A jury can probably infer that D intended to cut the costs of removing the trees, since removal costs \$30,000.

Under the facts, D was unjustly enriched by \$30,000 if not more. D was able to avoid paying the costs to remove the trees so he should be liable to P in paying them. A court will most likely award P \$30,000 to remove these trees.

B. Compensatory Damages

Compensatory damages place the defendant in a position he would have been in had the damages not been done. In order to prevail, a plaintiff must show (1) damages, (2) causation, (3) foreseeability, (4) certainty.

In this case, P will claim compensatory damages for the decreased value of his home, and the lost value of the garage and motorcycle. P can show damages based on the D's conduct. The damages were actually and proximately caused by D, because but for D's actions, P's damages would not have occurred and the damages were closely related to D's actions. P will argue that all of his damages were foreseeable. Lastly, P's damages were certain, given the values stated in the facts.

Motorcycle Limit. In the cases of personal property, the compensatory damages will be limited to the replacement value, if the repair value exceeds the replacement value. Nothing in the facts indicate that the motorcycle had sentimental value or was unique in any sort of way. If court award compensatory damages for the motorcycle, it will be limited to \$4,000; P will not be given a \$5,000 award.

C. Ejectment

Ejectment is remedy that can be award for an ongoing tort.

P will claim that he is entitled to an order requiring D to eject, or remove his trees from his land. Since the trees were left on his land indefinitely, P will claim that such an award is necessary. What is more likely, however, is that a court will award P monetary damages in order to pay for the removal of the trees.

D. Punitive Damages

Punitive damages are awarded when a defendant's action are malicious and/or willful and wanton. It can only be award when there are other damages. These damages are award to punish the defendant and deter future offenders. The Supreme Court has limited the award of punitive damage to a single digit ratio, that is, punitive damages are limited to 1:9, or nine times the legal damages.

Here, D's conduct was wanton and willful, as evidenced by his concealment of leaving the trees in a place not obvious to P. D knew that P would only use the house in the summers and he was using this information to his advantage. During the time P was away, P incurred substantial damage to his personal and real property. A jury can infer that D was attempted to mitigate the cost of improving his own lot, and instead by his conduct, D diminished the value of P's lot. D was unjustly enriched. P will probably not receive a punitive damage nine times his calculable legal damages, but he will probably receive an amount that would be adequate to ensure that D will not engage in this sort of conduct again.

III. CONCLUSION

P's causes of actions will be trespass and nuisance in this case. As for his remedies, P will seek compensatory damages, restitutionary damages, as well as punitive damages, all in the form of monetary damages. A court, in its discretion, will probably award P punitive damages because D's conduct was wanton and willful and the court will want to deter D from engaging in the same activity.