

Essay 6 – 60

Donor comments:

Missed trespass to chattels and conversion. Wrote about negligence for 60% of the answer and it's not even an intentional tort.

3)

Paul's Tort Claims Against Doug

Trespass to Land

A party commits a trespass to land when they knowingly enter the land of another without the permission of the landowner. A defendant is liable for any foreseeable damages caused by the trespass.

Here, Paul will argue that he had granted Doug an easement across his property to transport lumber to a lumber mill (validity of easements not discussed here because it is outside the scope of the call). By going outside of the scope of the easement, Doug was on Paul's land outside of the permission granted to Doug. Doug will argue that there was no conveyance and that he was on Paul's land with permission. Paul will likely be successful in this argument and be entitled to damages resulting from the trespass (discussed in remedies below).

Negligence

To be guilty of negligence, a defendant must have been found to have a duty to the plaintiff, to have breached that duty, to have caused the harm suffered to the plaintiff, and the plaintiff must have suffered damaged.

Duty - Generally a duty is only owed to a foreseeable plaintiff, or where a special relationship exists between the plaintiff and the defendant.

Here, Doug will argue that he owed no duty to Paul because it was not foreseeable that Paul would be harmed by Doug dumping trees in a wooded area that Paul doesn't use and would be unlikely to see. Doug has not created an eyesore, and Doug has not deprived Paul the use of any section of his property because Paul doesn't use the wooded area with the stream. Paul will argue that he is a foreseeable plaintiff because Doug knowingly dumped the trees on Paul's land without his permission. It is reasonably foreseeable that

someone would not desire unwanted items dumped on their property. Doug owed a duty to Paul not to dump trees on Paul's property.

Breach of Duty - If defendant fails in acting, or omitting actions, in accordance with the imposed duty, the defendant will be found to have breached that duty to the plaintiff.

Here, Doug will not be able to argue that he did not breach his duty because he did, in fact, dump trees on Paul's property.

Causation

Cause-in-fact: the breach of the duty must be a but-for cause of the harm to the plaintiff. If defendant breach of duty is not a but-for cause of plaintiff's harm, the plaintiff will not be entitled to recovery from the defendant.

Here, Paul will posit that but-for Doug's dumping of trees on his land, Paul would not have suffered flooding of his garage, depreciation of his property value, removal cost of the trees, and damage to his motorcycle. Doug will argue that the dumped trees are not the but-for cause of the damage, rather the flood is the but-for cause. Paul will then argue that the flood would not have occurred but-for the trees being dumped and falling into the stream, blocking the flow of water. The trees are likely to be found to be a but for cause.

Proximate Cause - the breach of duty must also be the proximate cause, or legal cause, of the damage to plaintiff. That is to say, the damage must flow proximately from the actions of the defendant without intervening and superseding causes that would relieve the defendant of liability. Gross negligence, intentional torts, criminal acts, and acts of God have been deemed intervening and superseding causes. Ordinary negligence and proximate medical treatment for injuries are, for example, not an intervening and superseding cause.

Here, Doug will argue that the forces of nature are intervening and superseding causes. He will propose that the rain in the winter is what caused the stream to overflow and send waters raging toward Paul's home. Paul will argue, however, that the amount of rainfall that winter was normal. And because it was a normal amount of rainfall, it will not be considered an act of God that would break the chain of causation and excuse Doug of liability.

Paul will be able to show that Doug's breach of duty is the but-for and proximate cause of Paul's damages.

Damages - actual damages must be alleged. Punitive and nominal damages are generally not awarded for negligence.

Here, Paul asserts \$30,000 to remove the trees, a \$10,000 diminution in value of his property, and that repair of his motorcycle will cost \$5,000, or replacement will cost \$4,000 in the alternative. Doug will not be able to argue that Paul has asserted damages for Doug's breach of duty that caused Paul's harm.

Defenses

Contributory Negligence - In a contributory negligence jurisdiction, the plaintiff may be barred from recover yif he contributed any fault to the damages that he incurred.

If in a contributory negligence jurisdiction, Doug may argue that Paul contributed to the harm by not actively surveying his property to remove potential dangers to his home. Paul will argue, however, that Doug cannot first created the risk, then impose upon Paul a duty to avoid the risk. There was no affirmative action by Paul that contributed to the damages that he suffered, and it is unreasonable to expect Paul to hike through the woods on a daily basis to remove errantly dumped trees by trespassers. Paul will not be found contributorily negligent.

Comparative Fault - in a comparative fault jurisdiction, damages are awarded in proportion to the fault of each party. With two parties, in a pure comparative fault jurisdiction (the majority rule) the plaintiff's award will be reduced by the plaintiff's percentage of fault. In a modified comparative fault jurisdiction (the minority) the plaintiff cannot recover if responsible for more than 50% of the harm.

Assumption of Risk - A defendant can assert that he is not liable because a plaintiff knowingly and voluntarily assumed the risk following the conduct.

Here, there is no indication that Paul assumed any risk or that Dough attempted to procure any such agreement of assumption of risk . Paul will not be found to have assumed the risk.

What Remedies can Paul Reasonably Seek?

Remedies for Trespass to Land

Paul will likely be entitled to damages resulting from the trespass (discussed in remedies below). The damages directly resulting from the trespass will be the removal of the trees in the amount of \$30,000 and the diminution of value in the amount of \$10,000. Paul can argue that the rest of the damages are a result of the trespass, but will be most likely awarded this amount based on the trespass action alone because during the trespass, Doug dumped trees on Paul's property. Those trees had to be removed and their presence caused a \$10,000 diminution in value from \$50,000 to \$40,000. (I'm assuming here that the diminution in value is due to the physical presence of the trees, not the flooding damage to the garage. If it is the flood damage, see below in Remedies for Negligence).

Remedies for Negligence

Compensatory damages

Compensatory Damages are meant to put the aggrieved party back into a situation as if the harm had not occurred. The object of damages in negligence are to make the plaintiff whole, and generally not to punish. As such, nominal and punitive damages are typically not awarded.

Here, Paul would be entitled to damages to compensate him from the harm caused by Doug's negligence. If the diminution in value is deemed to be the flooding damage to the garage, then that \$10,000 will be awarded as compensatory damages. In addition, Paul should be awarded the lesser of the cost to repair or replace his motorcycle. Here that would be \$4,000. Unless the motorcycle is unique, which is unlikely if the repair cost is only \$5,000, Paul should be satisfied with replacement.

Injunctive Relief

Injunctive relief can be awarded if there is inadequate legal remedy, there is a substantial property right (which is generally assumed to be the case), the relief is feasible, the balance of interests weighs in favor of the plaintiff and the defendant has no defenses such as unclean hands, or laches.

Here, Paul may seek injunctive relief to keep Doug off of his land even though he had previously granted him permission to cross it. Damages would not be sufficient to prevent Doug from doing this again because Paul may suffer repeated and substantial damages. The relief is feasible because the court can write the order and Paul can notify the court of violations. The interests may be argued to weigh in favor of Paul because Doug has acted in bad faith in obtaining an easement across Paul's property only to then dump trees and cause so much damage. Doug will have a hard time arguing against such factors that strongly favor injunctive relief. The facts also indicate that Doug would have no defenses of unclean hands or laches against Paul because Paul has not acted in bad faith or unduly delayed his action.