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1. If Michelle sues Len regarding his continued use of the smokehouse, what claims, if any, may she reasonably raise?

Michelle may claim that Len has **Breach of Quiet Enjoyment**. Michelle has a right to use and enjoy her land without the unreasonable interference of others. Remedies may include legal damages, such as money to make up for the value of the lost enjoyment or equitable damages such as an injunction to prohibit Len from operating his meat smoker.

Michelle may also claim that the smoke / smells from Len's house **trespass onto land**. Things such as bright lights and smells wafting onto property qualify as such. (Trespass to land is defined below.)

1a. What defenses, if any, may Len Reasonably assert?

Len will likely assert that he has not breached her right to quiet enjoyment. That his use of the smoker is reasonable, and that he has the right to use the smoker as part of the enjoyment of his property. The facts are silent as to when and how often Len uses the smoker, or if he uses it on a commercial basis, which may make his use less reasonable.

Len may also assert that Michelle's complaint is unreasonable and subjective and not based on an objective reasonable person's standard, and therefore her claim does not rise to the level of interference with her quiet enjoyment.

Len might try to claim that Michelle came to the nuisance, however this argument will fail because, Len by his own admission has been retrieving his dog from Michele's patio "for at least ten years" and the facts state that Len only installed the smokehouse three years ago.

1b. What is the likely outcome?

A homeowner has a reasonable right to be able to enjoy their home and the surroundings without intrusion by others. Here the question is going to come down to what is reasonable. The facts do not state that this is a large commercial smoker, or that by 'supplying smoked meats to friends" Len is operating some sort of large scale business at his home that would run afoul of zoning regulations etc. The court would likely look at the reasonable person in Michelle's place to decide if the smoke was excessive. The facts state that her guests have also complained of the smoke smell, and she's had to stop having outdoor parties because of this. This fact may bode well in favor of Michelle that the reasonable person would be annoyed by the smell and that it interfered with her quiet enjoyment of the property.

If Michelle is successful in asserting that Len has breached her quiet enjoyment, She may be entitled to damages to make up the value for her loss of enjoyment of the property, or she may be able to enjoin Len to not use the Smoker during certain times etc.

2. If Michelle sues Len regarding fetching his dog, what claims if any may she reasonably raise?

Trespass to land

Trespass is defined as the knowing entry onto land of another.

Len's dog is a possession (chattel) of Len's, and Len has a duty to make sure that his dog does not go onto other person's property.

The facts state that Len knows the dog does it and that Len does nothing to stop it, here Len is trespassing on Michelle's property via an instrument (his dog) Typically, when animals wander onto other persons property, (such as cattle that gets out) the owner is allowed access onto the property by necessity to retrieve the animals. Here, this seems to happen repeatedly, and the dog isn't just running through an open field, it's being found/retrieved from Michelle's patio on a regular basis.

The Dog digging hole

The Dog's behavior of digging a hole under the fence, may also be considered to have caused damage to Michelle's property. Depending on the size / cost to repair the hole, Michelle may be able to seek damages from Len to repair, or possible nominal damages.

Trespass to land by Len fetching Dog

Here, Len is knowingly entering the property of another. He knows it's Michelle's property, and she has gone as far as to put up a no trespassing sign and a fence to prohibit the access.

Damaged Fence

Len purposely cut the wire fence to enter Michelle's property to retrieve the dog. Here, Len damaged Michelle's property, further, Michelle may assert a claim of Trespass to Chattel which is the taking and carrying away of the property of another to deprive the owner of it's use or substantial value. He didn't carry the wire far, but the parts that he cut, did substantially deprive Michelle of the value of use, i.e. to keep Len out.

Breach of quiet enjoyment

Here, Michelle may be able to claim a breach of quiet enjoyment (Defined supra) because Len frequently invades her patio, and she doesn't know if and when Len is going to be on her property. She has the right to reasonable use of her land without her neighbor's interference.

2a. What defenses, if any, may he reasonably assert?

Len knowingly enters the property of Michelle. He may try to claim necessity, to retrieve his dog as a defense. This would work if it only happened once/few times, but the facts state that Len "frequently invades" Michelle's patio to retrieve the dog.

Len may also try to use the defense of consent. He's done it on a number of occasions without Michelle complaining. He knows now that she doesn't wish

for him to be on her land, but he may try to use this as a defense to the prior trespasses (before the sign and fence).

Because Len has done this for so long, Len may try to claim that he has either an easement to Michelle's property or has a claim under adverse possession, which would allow him to use the property.

The Adverse Possession claim would likely fail, because he has not done it for what the common law (No statutory law mentioned) of 20 years, nor has he paid the tax on Michelle's property.

Easement by necessity - would also likely fail, because Len has access to ingress/egress over his own property without the use of Michelle's.

Prescriptive Easement Claim, one must use the property of the owner, openly, adverse to the owner's use and not with their permission for a statutory amount of time. Here Len claims that he's been fetching Dog for at least 10 years. Which may satisfy the time requirement. Further, he has been doing it openly, and adverse to Michelle's use, and her placing of the fence and sign underline the fact that she does not wish to have Len or his dog on her property, and has not granted them permission to be on her property.

2b. Likely outcome?

Michelle will likely receive Nominal Damages for the trespass of the Dog, and the repair of the hole dug by the dog.

Compensatory damages for the cost to the damage of the fence.

Michelle may be entitled to Punitive damages to punish or teach Len to keep his dog on his own property. Here, Len knowingly does it time and time again, and an award of nominal damages, and damages to repair the damage to property is not likely enough, but Punitive Damages to punish the wrong doer and to discourage repeated performance may be effective.

Len would not likely be successful on a defense of prescriptive easement, as he is trespassing to retrieve the dog.

Michelle may also be entitled to nominal damages for breach of quiet enjoyment, if Len and his dog's frequent invasions of her porch substantially impair her ability to to enjoy her property.

3. Is Michelle likely to prevail in her argument for additional compensation from Town?

Under the 5th U.S. Constitution, the Government may take property for a public purpose from a landowner, but it requires that the owner be justly compensated for the taking.

Here, the Town (government actor) is taking the land for a public park (public purpose). The amount tendered for compensation was a sum substantially exceeding the price of comparable parcels recently sold in the area. This makes the "just compensation" seem adequate based on the facts at hand.

Additional Compensation for Value

Michelle's argument that the amount is substantially less than a sum she turned down for the land a few years ago, is not persuasive, as the Town is not required to reimburse her for a prior value, only the fair market value at the time of the taking. Because the real estate market fluctuates, it is reasonable that the Town must compensate her for the current value, and by the facts they have exceed that value.

Michelle is not likely to prevail on this matter.

Additional Compensation for Relocation Expenses.

Town is not required to additionally compensate Michelle for relocation expenses. If Michelle was a lessee /tenant of another property owner, she would be entitled to a portion of the compensation for her lose of use of the land under her rental agreement. As the owner of the property, unless there is something exception and significant causing extensive costs to relocate, or other substantive hardship (Such as a business with large industry specific fixtures that have been mounted into the ground, that may require a crane and

hundreds of thousands of dollars to relocate) Michelle is not entitled to compensation for relocation. Nothing in the facts indicate otherwise.

Given that Michelle has already been compensated substantially exceeding the prices of comparable parcels, and this is a residential move, as such Michelle is not likely to prevail on this matter either.

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