

Tort Law for Paralegals: Chapter 8

Chapter Outline

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Chapter 8

Intentional Torts: Injuries to Property

Summary: This chapter introduces students to intentional torts involving injuries to property: trespass to land, toxic torts, trespass to chattel, conversion, slander of title, commercial disparagement, and defamation by computer.

CHAPTER OUTLINE

I. TRESPASS TO LAND

A. Occurs when the tortfeasor enters upon the landowner's real estate without consent.

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Intentional Torts: Injuries to Property

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CHAPTER OUTLINE

I. TRESPASS TO LAND

A. Occurs when the tortfeasor enters upon the landowner's real estate without consent.

B. The tortfeasor's intentional actions violate the landowner's exclusive right to use his or her land.

C. Elements

1. Tortfeasor's unauthorized entry upon another person's land

2. Tortfeasor's intent to enter land without consent

3. Tortfeasor's actions interfering with landowner's exclusive right to use land (possession)

D. Entry defined

1. Tortfeasor's actions that interfere with landowner's exclusive right to use real estate.

2. Personal entry: Occurs when tortfeasor personally enters land.

3. Physical entry: Occurs when tortfeasor places unwanted substances upon another person's land.

E. Unauthorized entry

1. The landowner cannot have consented to the tortfeasor's entry upon the land.

2. Consent may be express or implied.

a. Express: Owner telling hunters that they have permission to hunt on the land.

b. Implied: Owner cleaning sidewalks of snow or putting "welcome" mat outside door; stores placing "open" signs in windows for public to see.

3. Consent may be implied by law (e.g., utility easements; law enforcement officers entering premises for service of process).

F. Technical trespass

1. Trespass does not require any physical harm to the land. This is called technical trespass.
2. If no actual harm, nominal damages are often awarded (classic award = one dollar). Example: Walking across your neighbor's yard-no harm done, but technical trespass occurred.

G. Intentional interference: Tortfeasor must intend to enter owner's land without consent.

H. Landowner's exclusive right of possession

1. The tortfeasor's unauthorized entry must interfere with the landowner's exclusive right of possession, that is, the exclusive right to use the landowner's realty.
2. Even slight entries, such as with technical trespasses, are sufficient to invade this right.

I. Trespass above and below land:

1. The tortfeasor may trespass upon the landowner's property rights above or below the ground.
2. The landowner's property interests, at common law, went to the top of sky and the center of earth.
 - a. Latin maxim, *Cujus est solum ejus est usque ad coelum* ("he who has the soil owns upward unto heaven and downward to perdition").
 - b. Invaders of air and light space, or of minerals or subterranean water supplies, can be trespassers to land.
3. Modern statutes and common law have redefined many property rights in water, minerals, and air space (e.g., implied easements for aircraft; statutes regarding oil and gas rights).

II. TOXIC TORTS

A. Lawsuits involving toxic chemicals, pollution, and hazardous waste disposal and transportation.

B. Elements of trespass to land satisfied (e.g., when underground toxic dump seepage contaminates well water supplies).

C. Nuisance and absolute liability theories also apply.

D. Text reprints Am. Jur. 2d excerpts discussing hazardous waste transportation, disposal, manufacture, processing, distribution, and use. The chapter also discusses CERCLA, the federal statute providing private citizens with causes of action for environmental statutory violations.

III. TRESPASS TO CHATTEL

A. Occurs when tortfeasor possesses (or interferes with use of) someone else's personal property without consent

B. Chattel = personal property (use examples from classroom).

C. Elements

1. Unauthorized possession of, or interference with use of, another person's personal property (dispossession)

2. Tortfeasor's intent to deprive (or interfere with) owner's possession or exclusive use of chattel

D. Dispossession: Tortfeasor's unauthorized possession of owner's chattel.

E. Unauthorized interference with use

1. The chattel owner has the right of exclusive possession, that is, to use his or her personal property free from interference.

2. The tortfeasor need not dispossess the owner to commit trespass to chattel. Interference with use is sufficient. Examples: Tortfeasor poisoning owner's pets; tortfeasor letting air out of owner's automobile tires; tortfeasor putting rocks in neighbor's yard so neighbor hits rocks with lawn mower and breaks mower blades.

F. The owner cannot consent to the tortfeasor's possession or interference with use of chattel. Consent may be expressed (e.g., verbal permission) or implied (e.g., store distributing free merchandise as promotional gimmick).

G. Intent to dispossess or interfere with use

1. The tortfeasor must intend to deprive the owner of possession of his or her chattel, or to interfere with owner's use of chattel.
2. Intent may be expressed (e.g., taking a bicycle at random from a parking rack and riding it across town) or implied (e.g., landlord changing locks on apartment door to keep tenant out for failure to pay rent, which prevents tenant from gaining access to his or her belongings inside).

IV. CONVERSION

A. History: Conversion originated as the fifteenth-century English tort of trover, a type of trespass on the case.

B. Conversion occurs when the tortfeasor, without consent, deprives the owner of possession of the owner's chattel and converts it to the tortfeasor's own use. Conversion = broader form of trespass to chattel. Many courts use the terms interchangeably, although they are distinct torts with separate origins.

C. Elements

1. The tortfeasor deprives the owner of the possession of chattel (dispossession).
2. The tortfeasor intends to deprive the owner of the possession and convert the property to the tortfeasor's own use.
3. The owner has not consented to the tortfeasor's possession and use of chattel.

D. Dispossession

1. The tortfeasor must deprive the owner of the possession of chattel.
2. Courts often state that the tortfeasor "exercises dominion and control over chattel, which is inconsistent with owner's right to exclusive use."

E. Extent of deprivation

1. Majority rule: Any dispossession, no matter how lengthy, is conversion.
 2. Minority rule: Tortfeasor must intend to deprive owner of chattel permanently (intent may be implied from conduct).
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F. Methods of deprivation

1. Physical dispossession: Tortfeasor takes actual physical possession of chattel.
2. Destruction of or damage to chattel

G. Intent to deprive and convert to tortfeasor's use

1. The tortfeasor must intend to deprive the owner of the chattel possession and convert the chattel to the tortfeasor's own use.
2. Intent may be expressed (e.g., taking bicycle, in preceding example) or implied (e.g., simply by using chattel, tortfeasor implies intent to dispossess and convert).

H. Lack of consent:

1. The chattel owner cannot consent to the tortfeasor's possession and personal use of the property.
2. Consent may be expressed (e.g., owner says, "Here, use my car") or implied (e.g., computer professor copies a personal computer program for students' home use. Implication is that students may use program for course purposes. Query: Could students use it for nonclass-related purposes?).

I. Conversion as a crime: Most state criminal statutes define conversion as a crime.

V. SLANDER OF TITLE

A. Occurs when tortfeasor makes false statements about another person's ownership of property

B. False statements are intended to hurt the owner's ability to use the property.

C. Elements

1. Tortfeasor's false statements regarding person's ownership of property
 2. Tortfeasor's intent to harm owner's use of property
 3. Communication (publication) of falsehoods to third parties
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D. False statements regarding ownership: Tortfeasor commits slander of title by making false statements about person's ownership of property.

E. Intent to harm owner's use of property: By making false statements about ownership, tortfeasor must intend to hurt owner's use of property.

F. Publication: Tortfeasor must communicate false information to third parties. This communication can be oral or written.

G. Typical case scenario: Filing a spurious lien-slander of title occurs when the tortfeasor files a false lien against real or personal property. Example: A plumber makes repairs on your plumbing that you did not authorize. Thus, the claim is disputed. The plumber's proper remedy would be to file suit for your nonpayment, based on breach of contract. Suppose instead that the plumber filed a mechanic's lien against your house. This would be improper, because the claim is disputed. Slander of title occurs because your ownership rights have been defamed. The false information about your ownership is that a valid lien has been filed against your land. Anyone searching the county recorder's realty records would discover the lien and, without knowing better, would assume it was valid. This could prevent you from selling your house or force you to buy more expensive title insurance. Records at the county recorder's office are public, so communication (publication) is presumed (automatic).

VI. COMMERCIAL DISPARAGEMENT A. False statements communicated (published) to third parties about a person's goods, services, or business B. Three varieties:

1. Disparagement of goods
2. Disparagement of services
3. Disparagement of business

C. Elements

1. The tortfeasor makes false statements about the individual's goods, services, or business.
 2. The tortfeasor intends to injure the owner's ability to use goods, provide services, or conduct business (intent may be expressed or implied).
-

3. The tortfeasor communicates to third parties (publication); may be oral or written.

VII. DEFAMATION BY COMPUTER

A. Inclusion of false information about consumer's credit rating in a computerized database, which harms consumer's ability to obtain credit

B. Elements

1. The tortfeasor supplies false information about person's credit rating.
 2. The tortfeasor enters (or has someone else enter) such erroneous data into a computerized database.
 3. The tortfeasor communicates incorrect information to third parties, such as credit reporting services to credit card companies or vice versa (publication).
 4. The victim's ability to obtain credit is injured as a result.
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Lecture Hints

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Lecture Hints

1. While discussing commercial disparagement in class, you might wish to ask students to comment upon the times they have criticized businesses, services, or products online. This discussion should lead to some interesting reactions, from heated rationalizations to sudden revelations of possible intentional tort liability. You might also inquire as to whether some students have made critical statements years ago that can still be found on the Internet, even though their opinions might have changed since posting them. The exercise hammers home the lesson that everyone, at some time or another, has committed a tort.

2. You might wish to supplement the exercise

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2. You might wish to supplement the projects from this chapter with a pleadings exercise involving slander of title. A suggested hypothetical is included here: Debbie G. Melbourne is a house painter. On April 11, Frederick J. Boswell hired Debbie to paint the exterior of his home. Frederick instructed Debbie over the telephone to pick up paint at the Second Coat, a local paint supply store at which he had purchased the paint the day before. On April 12, Debbie went to the paint store and asked for the Boswell order, but a new clerk mixed up the order and gave Debbie paint for another customer, Professional Painting, Inc. Neither Debbie nor the clerk noticed this error, although the invoice clearly indicated that the order was for PPI. Debbie finished painting Frederick's house on April 13. Frederick returned from an out-of-town trip on April 15. Angrily, he telephoned Debbie and complained that the paint was the wrong color. After several telephone calls to the paint store, the mistake was discovered. The store's manager, Helvey C. Marot, admitted that his employee was responsible and offered the correct paint free of charge. Frederick found the invoice and told Debbie that, if she had read it carefully, she would have caught the error herself. Frederick fired Debbie and hired another painter to repaint the home. He refused to pay Debbie for her work. In response, Debbie filed a mechanic's lien against Frederick's real estate on April 21. Frederick wants to sue Debbie immediately. You might wish to have students research the relevant provisions of your state's mechanic's lien statutes with this drafting assignment, so that they may cite it appropriately in their complaints.

Answers to Case Questions

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Answers to Case Questions

California Department of Toxic Substances Control v. Payless Cleaners

1. The purpose of CERCLA is to allocate the rights and responsibilities of those involved in hazardous waste reclamation, and to allow contribution actions by PRPs. The state agency in this case was responsible for investigating and remediating the contaminated groundwater.
2. Yes, the purpose of CERCLA has been met. The Peters will be able to seek financial assistance in cleaning up the contaminated groundwater on their property that they did not cause.

Russell Corp. v. Sullivan

1. A public nuisance causes damages to all persons who come within the sphere of its operation, although it may vary in its effects on individuals. A

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Russell Corp. v. Sullivan

1. A public nuisance causes damages to all persons who come within the sphere of its operation, although it may vary in its effects on individuals. A private nuisance is limited in its injurious effects to only one or a few individuals.

2. No trespass was found because plaintiffs failed to show that they suffered an actionable invasion of their properties.

Koester v. VCA Animal Hospital

1. The dog owner could not recover for emotional distress because Michigan has no precedent for awarding damages for emotional injuries as a result of damages to personal property.

2. If tort liability were expanded to provide coverage for emotional injuries resulting from damage to personal property, it would indicate that human life is no longer viewed as being above everything else.

In re Bernard L. Madoff Investment Securities, LLC v. Peter B. Madoff

1. Opinion: Bernard L. Madoff sought out friends and relatives to invest in his fund. He received clients by word of mouth. He arbitrarily accepted some clients and not others, making an association with his company an exclusive and desired relationship that had status. He also preyed on religious groups that had known and worked with him for a long time.

2. Opinion: No, the scheme had gone on for so long that it is highly unlikely that no one was aware of what was going on.

3. Money is sometimes not appropriate for a conversion of chattel action because allegations that "merely refer to unspecified monies and assets" and give "no indication of an identifiable fund or otherwise segregated amount, nor . . . any description of the alleged transfer or transfers from which the Court could infer a specifically identified fund of money," are not sufficient to legally support such an action. In many cases outsiders will not have the necessary information to identify and specify the particular funds that should be a part of the conversion action.

SAHGAL v. DMA Electric, Inc.,

1. No, the court did not find sufficient intent to support an action for a slander of title claim. The mere filing of a mechanic's lien that is later found to be defective does not prove slander of title. The district court found DMA's lien invalid because it was not timely filed. DMA had reasonable grounds to support the filing of the mechanic's lien; this negates any allegations of malice. Had Scanlon and DMA had regular contact and communication with each other, perhaps the whole misunderstanding could have been resolved sooner.

Hartford Casualty Insurance v. Swift Distribution, Inc.

1. Dahl did not allege that Ultimate's publication disparaged Dahl's organization, products, goods, or services, Dahl was precluded from recovery on a disparagement theory.

2. The Hartford Insurance policy would have covered an advertising injury such as a claim for injurious false statement, or disparagement. However this was not alleged by the plaintiff.

AF Holdings, LLC v. John Doe

1. Both section 301 of the Copyright Act and the Communications Decency Act were reviewed by the court.

2. AF Holdings asked the court to consider the question of negligence. However, AF Holdings had not alleged any special relationship basis for imposing on Botson a legal duty to take affirmative steps to prevent the infringing activity that allegedly occurred over Botson's Internet connection.

3. Opinion: If an Internet provider has the obligation to police every statement made on its site, it would be an impossible for the provider to function.

Shields v. Zuccarini

1. Cybersquatting is the bad faith, abusive registration and use of the distinct trademarks of others as Internet domain names, with the intent to profit from the goodwill associated with the trademark.

2. Zuccarini deliberately used domain names that were confusingly similar to Shields's mark to divert Internet traffic to Zuccarini's own sites.

Problems

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Problems

In the following hypotheticals, identify the intentional tort(s) committed, if any, and support your answers.

1. Pestro Chemical Corporation manufactures Dredroxiphine, a poison used in insect sprays. A railway line delivers tanker cars full of the chemical to be unloaded into the plant. On breezy days, the fumes from the unloading stations drift across the highway onto Elmer Parsley's farm. The odors are pungent and are especially irritating to the sinuses. When Elmer and his family work outside on windy days, they are constantly besieged by the poison's smells. Their eyes water excessively, their noses run, and they are gripped by sneezing fits. Other farmers in the area have complained of similar symptoms. Visits to the family physician have revealed that Elmer has absorbed minute amounts of the chemical in his lungs and through his skin. Medical studies link

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Medical studies link exposure to the chemical with several forms of cancer. Elmer has farmed on his property since 1999. Pestro constructed its plant in 2001.

2. Ben left the Pick-Em-Up saloon after an evening of heavy drinking. Intoxicated, he stumbled across the street to the Tao, an oriental restaurant, and ordered a hamburger. The waitress, an exchange student at the local high school, did not understand English well, and because Ben's speech was slurred, she misunderstood him. When she returned with an oriental dish, Ben jumped from his chair and shouted loudly, "I didn't order this stinking slop! Get it outta my face!" Several customers stared at Ben as he yelled at the waitress, "I'll get the health department to shut this dump down, before somebody else gets poisoned!" The manager ran out from the kitchen and demanded that Ben leave the premises immediately. Ben refused to leave.

3. Alexa operates a day-care center for children. Jay, a nine-year-old, attended the center after school while his parents worked. Alexa discovered that Jay's parents were delinquent in paying their fees by three months. One day Jay brought in his father's portable computer for show-and-tell. Alexa asked Jay if he would like her to keep the computer locked up for safekeeping. Jay agreed. At the end of the day, Jay asked Alexa to return the computer, but she refused, stating that she would keep the computer until Jay's parents paid their bill.

4. Theresa rented an apartment from Whisperwood Apartments. Under the lease, she was responsible for paying for electricity and gas heat. When she moved into the apartment, she noticed that the electricity and gas were already on; the apartment owners paid for the utilities while apartments were vacant. She did not contact the utility companies to have the accounts transferred into her name, and she did not notify the apartment manager about the situation. Theresa lived in the apartment for three months before the error was discovered. She never paid any money for utilities, although utility bills for the apartment totaled \$250 for this time period.

5. Steve is a mason. He installed a concrete patio at the home of Jose and Elena Garcia. Elena stopped by Steve's house one day and paid his wife (in cash) for the work. Elena did not get a receipt. Steve's wife, however, never told Steve about the money. Barley sent several invoices to the Garcias, but they ignored them. Thinking the bill remained unpaid, Steve filed a mechanic's lien against the Garcias' real estate. Once the Garcias discovered the lien, they angrily telephoned Steve and explained about the cash payment. Steve's wife admitted to receiving the money, so Steve considered the matter settled. However, Steve did not release the lien at the county recorder's office.

6. Ryan owed his dentist for oral surgery. Ryan faithfully made monthly payments to the dentist. The dentist's accountant reported to a local credit rating service that Ryan had defaulted on the bill. The service included this information in its computerized credit files. Ryan applied for a credit card at a local department store, but was denied as a result of the bad credit rating. The department store was a client of the credit rating service and received monthly credit rating summaries.

Problem Answers

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Problem Answers

1. Pestro Chemical Corporation is engaged in trespass to land as a toxic tort, and Elmer Parsley would sue for damages to his property caused by Pestro's chemical production. Pestro's method of unloading the tanker cars allowed airborne toxic chemical vapors to be carried onto Elmer's farm. This was an unauthorized entry upon Elmer's land. Because of its careless method of unloading, Pestro's intent to enter without consent may be implied, as the airborne contamination could easily have been anticipated. Whenever Elmer and his family worked outdoors on windy days, they suffered severe physical reactions from breathing the chemical-tainted air. This was a substantial interference with Elmer's exclusive right to use his real estate (possession). Elmer's family suffered significant health harms. In particular, Elmer was exposed to a powerful carcinogen. Thus, Elmer's action against Pestro for toxic trespass to land would be successful.
2. Ben's statements constitute commercial

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2. Ben's statements constitute commercial disparagement: specifically, disparagement of goods ("stinking slop") and disparagement of business ("I'll get the health department to shut this dump down, before somebody else gets poisoned!"). Ben's accusations were false statements about the Tao's goods and business enterprise. Ben intended to hurt the restaurant's ability to sell food to its customers and encourage customers to recommend the establishment. Ben "published" his statements loudly and plainly, so that almost everyone present could hear. It is reasonably likely that the restaurant's business would suffer from the allegation that it was a public health hazard. Thus, Ben is liable to the restaurant owner for commercial disparagement. Ben is also liable for trespass to land. Although Ben was implicitly invited into the restaurant as a prospective patron, this consent to his presence on the premises was withdrawn when the manager ordered Ben to leave. By refusing to depart, Ben became a trespasser to land. One might argue that Ben's intoxication prevented him from intending to disparage or trespass. This is irrelevant-a "red herring"-because Ben's degree of intoxication, given his behavior, was insufficient to affect his ability to commit these intentional torts. Additionally, many recent state appellate court decisions disallow intoxication as a defense to various intentional torts, although these usually involve injuries to persons, such as assault, battery, or false imprisonment.

3. Alexa has committed trespass to chattel by keeping Jay's father's portable computer as security for payment of the delinquent day-care fees. Alexa dispossessed Jay's father of the computer by refusing to return it to Jay after show-and-tell. Neither Jay nor his father consented to Alexa's keeping the computer. Alexa clearly intended to deprive Jay's father of possession of the chattel. Thus, she engaged in trespass to chattel. Arguably, Alexa also committed conversion. By keeping the computer to compel Jay's father to pay the delinquent fees, Alexa converted the computer to her own use, as security for a debt. The other elements (which are basically the same as for trespass to chattel) are also met. As a practical matter, however, most courts would require that Alexa actually use the computer, rather than merely storing it, so proving the conversion cause of action would be difficult.

4. Theresa committed conversion and trespass to chattel against the apartment owners. Theresa's use of gas and electricity for three months without paying was unauthorized, as the owners had not consented. She knew (or reasonably should have known) from the lease that she was responsible for paying for these utilities. Her failure to notify the utility companies or apartment management implicitly indicates her intent to deprive the owners of the exclusive use of their utilities (dispossession) and to convert the utilities to her own use. Thus, Theresa is liable to the apartment owners for these two intentional torts. In some states, utilities are not considered personal property, although they are defined as goods under most states' versions of the Uniform Commercial Code. Instead, in such

jurisdictions, utilities are defined as services for purposes of intentional torts. As an aside, most states' criminal codes include the crime of theft of services. Theresa's actions would also constitute this crime, which is often included within criminal conversion statutes.

5. Steve filed an improper mechanic's lien against Jose and Elena Garcia's real estate. This constituted slander of title. Steve made a false statement regarding the Garcias' ownership of their home, by suggesting to the world that the Garcias had defaulted on a debt for services rendered. Steve intended to injure the Garcias' use of their property. The lien could prevent the Garcias from selling the house or, more realistically, from using the house as collateral to secure a loan or credit. By filing the lien at the county recorder's office, publication is presumed, as such records are available to the public for inspection. Steve aggravated his tortious conduct by failing to remove the lien once he learned that the Garcias had paid the debt in full.

6. The dentist's accountant has committed defamation by computer against Ryan. The accountant reported to the local credit rating service that Ryan had defaulted on his bill, when, in fact, he had made all monthly payments in a timely fashion. The accountant should have known that the report was false, based upon records of the dentist's financial transactions. This information was included in the agency's computerized database, which was published to the local department store. This information hurt Ryan's ability to obtain credit, because the department store denied Ryan's credit application based on the erroneous computer data. Thus, the accountant is liable to Ryan for this intentional tort. Arguably, the credit rating service would also be liable to Ryan, although it is questionable whether the agency could have known that the information was false. At best, it could be said that the service was negligent by including false information in its database that, through the exercise of reasonable care, it could have verified. Some courts would include this negligence within the tort of defamation by computer, although such a hybrid distorts the distinctions between these causes of action.

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Project

1. Which intentional torts discussed in this chapter are included in your state's common law? Are any defined by statute? Is conversion considered both an intentional tort and a crime in your state? If so, how are the two types of conversion similar and different?
2. Separate into study groups with several classmates to discuss the theories of intentional torts to property. You might wish to create your own hypothetical fact situations involving the intentional torts outlined in this chapter. Use the analytical methods discussed in Chapter 1 to answer your group's questions.
3. Slander of title often involves the filing of frivolous or unlawful mechanic liens. How are mechanic's liens filed in your state? Examine your state's statutes pertaining to mechanic's liens. You

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statutes pertaining to mechanic's liens. You might also wish to contact your county recorder's office to discover the procedure used for filing mechanic's liens.

4. Have students separate into small study groups and research whether your jurisdiction has enacted recent legislation allowing pet owners to set up trusts for their animals, whether there are any new custody cases involving pets, and whether a pet can be included as part of the family when a family requests a protective order against another person. You might ask whether these cases alter the students' perception as to whether pets are merely personal property, or something more.



Project Answers

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