AMENDED
2017 Ultimate Writer Regional Legal Writing Competition
Rules for Entrants

To the Student:

The Ultimate Writer Regional Legal Writing Competition is a unique, practice-oriented writing competition designed to test your analytical and legal writing skills as a young lawyer-in-training. The competition stands out for its significant cash prize awards as well as the fact that it is the first regional legal writing competition in Texas. The Texas Young Lawyers Association and Baylor Law School sponsor the competition, and all Texas law schools (except Baylor) are eligible to participate.

Assignment
You are to prepare a trial brief of three-to-five double-spaced pages based on the prompt enclosed. The problem is self-contained. No research is necessary; the problem includes all case law and facts required to respond. You are instructed NOT to do any research in preparing your answer. All entries must have only one author. No collaboration, coaching, or consultation is allowed.

You are required to sign an Affidavit (attached) stating that your work is 100% your own and that you performed no outside research. You also must sign a Photograph and Publicity Consent and Release (attached).

Form
Entries must be a maximum of five (5) double-spaced pages in length and must be in 12-point Century or Century Schoolbook font, with one-inch (1") margins, in Word (.doc) format. All citations should conform to The Bluebook: A Uniform System of Citation (20th ed.). Any entries not fully in accordance with required form are ineligible for consideration.

The body of your entry must contain your name, your law school, and the unique number assigned by your law school. No other identifying marks should appear on the entry. Submit your entry electronically as directed by your law school. Entrants grant to the Baylor Law School Legal Writing Program a license to copy, distribute, and display entrants’ writing to the extent necessary to administer and judge the contest.

Deadline
Your entry is due to your law school on October 27, 2017 by 5:00 p.m. Baylor Law will make the prompt available to the schools on October 20, 2017 by 9:00 a.m.

Standards
The entries will be judged based on originality, logic, reasoning, analysis of the issues, use of authorities, clarity, organization, the correctness of format and citations, grammar, writing style, and strength of conclusions.

Judging
Your law school will select its top three entries and submit those entries to Baylor Law. The Texas Young Lawyers Association will select the top ten entries from the submissions from
each school. Members of the Baylor Law School legal writing faculty will also rank the top ten entries and select the winner, second place, third place, and five honorable mentions. All judging will be anonymous and blind, without student name, school, gender, race, or other identifying characteristic.

Awards
The first-place winner receives $3,000. The second-place winner receives $1,500, and third place receives $500. Each of the top three finishers will receive a trophy and a check for their winnings. TYLA and Baylor will publicize the results of the competition in The Texas Lawyer and at an awards reception to be held later.

Good luck on becoming the Texas law student legal writing Ultimate Writer 2017!!
AFFIDAVIT

The undersigned law student hereby swears and affirms as follows: (1) that he/she is at least 18 years of age; (2) that he/she has personal knowledge of the facts stated in this affidavit; and (3) that he/she is competent in all respect to make and affirm this affidavit.

Affiant swears and affirms that he/she is, as of September 1, 2017, enrolled in a J.D. program at (Non-Baylor Texas law school) __________________________. Affiant further swears and affirms that all work product he/she has produced or turned in for the 2017 Ultimate Writer Regional Legal Writing Competition is his/her own work product, without any collaboration, coaching, input, or assistance by any third person and without doing any outside research.

Signed this ___ day of ________, 2017.

________________________________________
Law Student
Photograph and Publicity Release Form

I, ___________________________________, give the Texas Young Lawyers Association and Baylor Law School permission to use my name, likeness, image, and/or appearance as such may be embodied in any pictures, photos, video recordings, digital images, and the like, taken or made on behalf of The 2017 Ultimate Writer Regional Legal Writing Competition activities. I agree that the Texas Young Lawyers Association and Baylor Law School have complete ownership of such pictures, etc., including the entire copyright, and may use them for any purpose consistent with the Texas Young Lawyers Association and Baylor Law School missions. These uses include, but are not limited to illustrations, bulletins, exhibitions, videotapes, reprints, reproductions, publications, advertisements, and any promotional or educational materials in any medium now known or later developed, including the Internet. I acknowledge that I will not receive any compensation, etc., for the use of such pictures, etc., and release Texas Young Lawyers Association and Baylor Law School and its agents and assigns from all claims which arise out of or are in any way connected with such use.

I have read and understood this consent and release.

I give my consent to the Texas Young Lawyers Association and Baylor Law School to use my name and likeness to promote the Ultimate Writer program their activities in association with the program.

_________________________________  ________________________
Signature                                     Date
Ultimate Writer
2017

Traylor v. Flores
INSTRUCTIONS

This assignment takes place in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for this competition. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown.

In preparing the assigned document(s), you should concentrate on the materials provided in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
MEMORANDUM

To: Applicant
From: Jane Norman
Date: October 25, 2017
Subject: Traylor v. Flores

We have nearly completed the bench trial of the Traylor v. Flores timber trespass case. Our client, Marty Traylor, brought this action against adjoining landowner Carla Flores for wrongfully cutting and removing trees from his property. He is seeking an award of statutory treble damages. The parties have presented their evidence at trial, and the judge has now requested briefs on the issues of whether, based on the evidence adduced at trial: (1) defendant Flores is liable for timber trespass; and, if so, (2) whether single, double, or treble damages, or some combination thereof, should be assessed against her.

Please draft a persuasive brief to the court addressing the liability and damages issues outlined above. Our goals are to persuade the judge to hold Flores liable for timber trespass and award Traylor the maximum damages allowable by law based on the evidence, explaining why any lower measure of damages is inappropriate.

Prepare the brief in accordance with the guidelines outlined in the attached office memorandum. We have a statement of stipulated facts in this case so, as pointed out in the brief writing guidelines, you should write only a short introductory statement that reminds the court of the nature of the dispute and our goals. In drafting your arguments, however, you must use all relevant facts that support your arguments.
MEMORANDUM

To: All Lawyers
From: Litigation Supervisor
Date: September 8, 2016
Subject: Persuasive Briefs

All persuasive briefs shall conform to the following guidelines:

All briefs shall include a Statement of Facts. The Statement of Facts is intended to persuade the tribunal that the facts support our client's position. The facts must be stated accurately, although emphasis is not improper. Select carefully the facts that are pertinent to the legal arguments. However, in a brief to a trial court, when there is a statement of stipulated facts, the Statement of Facts section of the brief may be abbreviated. In such cases, the lawyer need only write a short introductory statement and direct the court's attention to the statement of stipulated facts, as supplemented by the record as necessary to complete the argument that follows.

The firm follows the practice of breaking the argument into its major components and writing carefully crafted subject headings that illustrate the arguments they cover. Avoid writing briefs that contain only a single, broad argument heading. The argument heading should summarize succinctly the reasons the tribunal should accept the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or a statement of an abstract principle. For example,

Improper: THE UNDERLYING FACTS ESTABLISH PLAINTIFF’S CLAIM OF RIGHT.

Proper: BY PLACING A CHAIN ACROSS THE DRIVEWAY AND BY REFUSING ACCESS TO OTHERS, PLAINTIFF HAS ESTABLISHED A
CLAIM OF RIGHT.

The body of each argument should analyze applicable legal authority and persuasively argue how the facts and law support our client's position. You should emphasize authority supportive of our client’s position, but you should also generally cite contrary authority, address it in the argument, and explain or distinguish it. Do not reserve arguments for a reply or supplemental briefing.

The lawyer need not prepare a table of contents, a table of cases, a summary of the argument, or an index.

Thus, the components of the brief are as follows:

1. Caption
2. Relief Sought and Basis for Relief
3. Statement of Facts
4. Argument and Evidence
5. Conclusion
6. Prayer for Relief
STATEMENT OF STIPULATED FACTS

1. Plaintiff Marty Traylor owns property covering several hundred acres of land in Cleveland County, Franklin.

2. Adjoining the Traylor property is a several-hundred-acre parcel of land owned by defendant Carla Flores.

3. Prior to 1880, the two parcels were part of a larger tract of land owned by the United States Government.

4. In 1879, the U.S. General Land Office ("USGLO") conducted the original survey of this area through licensed surveyors. The USGLO undertook the original survey to subdivide the area into smaller parcels, which the USGLO then sold.

5. In 1880, the USGLO transferred to Traylor's and Flores's ancestors their respective parcels. The Traylor family bought the west half, and the Flores family bought the east half.

6. The 1879 survey established and marked the one-quarter-mile-long common boundary running north and south between the Traylor and Flores parcels.

7. The 1879 survey established section corners monumented using wooden posts set in mounds of stone. The survey marked the lines between these corners by blazing trees along the common boundary. A blaze is a chest-high, smooth surface cut on a tree.

8. Between 2014 and 2016, the U.S. Department of the Interior, Bureau of Land Management ("BLM") resurveyed the boundary line between the parties' properties as part of a larger resurvey of portions of the county. The BLM resurvey is the only licensed survey conducted of these parcels since the original USGLO survey.

9. From September 2015 to January 2016, Carla Flores cut and removed approximately 700 trees from a strip of land along the parties' shared boundary.
DIRECT EXAMINATION BY JANE NORMAN,
Counsel for Plaintiff:

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Q: How long have you and Carla Flores shared a common property boundary?

A: Well, we each inherited our parcels from our families, who had owned them for generations. So, I guess that makes us lifelong neighbors in a sense.

Q: Was the boundary line between your and Ms. Flores's properties clearly delineated before the BLM resurvey?

A: Not at all. There were conflicting blaze marks at various points along the property line, and even some trees sprayed with paint and tagged with construction tape. Members of both families had tried to figure out where the true boundary was, but they eventually gave up.

Q: So, how did you and Ms. Flores deal with the uncertainty surrounding the property line?

A: Well, both of our parcels are big enough that we never really got around to sorting it out. When I heard about the BLM resurvey, I figured that we'd finally know once and for all where the true boundary line was.

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Q: How would you describe your relationship with Carla Flores?

A: Well, I thought it was pretty neighborly until I found out she was cutting down my trees.

Q: When did you discover this?

A: Sometime during the fall of 2015, when I got a call from a BLM surveyor by the name of Dale Haynes.

Q: Did you do anything as a result of Mr. Haynes's call?
A: Yes. I went out to the boundary between the two properties and saw that dozens of my trees had been chopped down. Everywhere I looked, I saw stumps where there used to be beautiful, mature ponderosa pines.

Q: What, if anything, did you do after you discovered that your trees had been destroyed?

A: I tried to reach Carla, but she never returned my calls. I left messages on her machine asking her to stop destroying my trees. I also posted some signs that said, "No Trespassing."

Q: Did your efforts have any effect?

A: When I went back about a month later to check on things, I discovered that even more of my trees had been cut down and hauled off. I couldn't believe that Carla had continued to log in this area and that she'd cut down more of my trees even after I posted the "No Trespassing" signs. That was when I decided to take legal action.

Q: Did Carla Flores have your permission to cut down any of your trees?

A: Absolutely not. In fact, she knew that I'd turned down some lucrative logging contracts with logging companies that wanted to harvest trees on my property.

Q: How did she know this?

A: Well, over the years I told her about a few of the offers I'd received from logging companies. She told me I was silly to turn down these big money offers. She said that if I ever changed my mind, I should let her know because, since she was in the logging business, she wanted the logging rights to my land.

CROSS-EXAMINATION BY WILLIAM WARREN,
Counsel for Defendant:

* * * *

Q: Mr. Traylor, isn't it true that your family and the family of Ms. Flores had a longstanding agreement about the boundary of the two properties?

A: No, she and I never agreed on the exact boundary. As the landscape changed over the years, it was more and more difficult to determine the exact location
of the dividing line. But we knew within a few feet or so where our property line was, especially in the area where she chopped down my trees.

Q: Showing you what has been marked as Defendant's Exhibit A for identification, can you identify it?

A: Well, it looks like a letter with a hand-drawn map from my grandfather, Amos Traylor, to someone by the name of Ben Flores.

Q: You recognize the handwriting of your grandfather, Amos Traylor, don't you?

A: Yes, it seems to be his writing. It looks like his letters that we have in the family collection.

Q: And your grandfather wrote this letter in 1936, didn't he?

A: Well, all I know is the letter says it was written on April 18, 1936.

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DIRECT EXAMINATION BY JANE NORMAN,
Counsel for Plaintiff:

Q: As a licensed surveyor for the United States Department of the Interior,
Bureau of Land Management, were you involved in the BLM resurvey of
Cleveland County?

A: Yes, I was the lead surveyor and the point of contact for local landowners.

Q: Are you familiar with the parcels owned by plaintiff Marty Traylor and
defendant Carla Flores?

A: I am. The Traylor and Flores parcels were surveyed as part of the BLM
resurvey.

Q: Did you have contact with Ms. Flores during the fall of 2015?

A: Yes. We were surveying a stretch of the boundary between the Flores and
Traylor parcels when I spotted Ms. Flores and her crew cutting down trees
west of the property line, in fact, more than 100 feet onto the Traylor parcel. I
noticed that she had already cut about 300 trees. When I pointed out to Ms.
Flores that she was logging trees on the Traylor parcel, she told me that the
trees were on her property.

Q: What specifically did she say to you?

A: She said her grandfather and Traylor’s grandfather had agreed on the
boundary. Then she pointed to some old blaze marks and paint stains about
20 feet farther west inside the Traylor property and said that the parties had
relied on these markings for years. When I pointed out that the true boundary
line was more than 100 feet east of the point where she was logging, she said
it wasn’t fair for BLM to come in and try to change the boundary lines after
all these years.
Q: Did the conversation end there?
A: No. I warned her that the boundary markers she was relying on weren't accurate, and I cautioned her against continuing to log there until BLM could complete its resurvey.

Q: Do you know whether Ms. Flores continued logging in that area after you told her this?
A: Well, before the resurvey, the boundary line was a real mess and nobody knew exactly where it was located.

Q: Why is that?
A: Because the section lines blazed on trees during the original survey back in the 1800s had deteriorated. Previous attempts had been made to locate and perpetuate the original survey monuments. Over time, these attempts created errors and conflicting blaze marks and other evidence concerning the property boundaries. This problem wasn't limited to the boundary line between the Traylor and Flores properties. It was a widespread and well-known problem throughout the county, which is why we were called in to do the resurvey.

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CROSS-EXAMINATION BY WILLIAM WARREN,
Counsel for Defendant:

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Q: As the surveyor of the boundary between the Traylor and Flores properties, you are aware of the natural features in the area, aren't you?
A: Of course.

Q: So, you know where Bella Creek is, correct?
A: Yes.

Q: And that creek bed shifts, doesn't it, Mr. Haynes, depending on whether it's the wet or dry season?
A: Yes, that makes sense.

Q: And over time, creek beds can shift several hundred feet, depending on
changing natural conditions, right?

A: Well, several hundred feet may be a stretch but, yes, creek beds have been known to move.

Q: Well, 50 or 100 feet over 100 years wouldn't be a stretch, would it, Mr. Haynes?

A: No, that could happen.

Q: OK. Are you aware of a large outcropping near the north end of the Traylor-Flores properties, known by most local folks as "the big rock"?

A: Yes.

Q: And "the big rock" is north of Bella Creek, right?

A: Right.

Q: And the distance between the bend in Bella Creek and "the big rock" is well over 1,000 feet, isn't it?

A: At least 1,000 feet.

Q: And the area where you saw Ms. Flores logging trees along the Traylor-Flores boundary is between the bend in Bella Creek and "the big rock," correct?

A: That's correct.
DIRECT EXAMINATION BY WILLIAM WARREN,
Counsel for Defendant:

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Q: Ms. Flores, whose trees did you believe you were cutting down?
A: I thought I was on my side of the boundary line and that the trees belonged to me.

Q: Why did you believe the trees belonged to you?
A: Because I followed the existing blaze marks made by our families over the years, and the marks conform to the 1936 agreement between my grandfather, Ben Flores, and Amos Traylor. The Traylor parcel is west of mine, and I made sure I stayed east of the existing blaze marks, which are based on the line between the bend in Bella Creek and "the big rock."

Q: Showing you Defendant's Exhibit A, can you identify this?
A: Yes. It's a copy of a letter to my grandfather from Amos Traylor. There's a hand-drawn map on the letter showing the boundary between the two properties. It's among the family papers passed along to me by my dad before he passed on.

Q: Did you and Mr. Traylor ever discuss the boundary between your properties?
A: We had a few discussions over the years about the poor condition of the boundary line. I thought that he would not object to my logging along the common border, as long as I stayed east of the existing blaze marks.

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CROSS-EXAMINATION BY JANE NORMAN, Counsel for Plaintiff:

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Q: Ms. Flores, isn't it true that you knew before you began logging along the Flores-Traylor boundary line that BLM was in the process of resurveying property lines in this area?

A: Yes, I did receive a notification letter from BLM before I began my logging operations.

Q: And you own literally hundreds of acres of land in Cleveland County, don't you?

A: Yes.

Q: And there was nothing to prevent you from logging another section of your land away from the boundary line, was there?

A: Well, the trees that we cut were ready for thinning, and the logging trucks had easy access. But, in any event, I only cut down trees that belonged to me.

Q: But you didn't know for a fact that the trees you harvested were on your property, did you?

A: Based on everything I knew at the time those were my trees.
April 18, 1936

Benjamin Flores
Route 2, Box 4
Belleville, Franklin

Dear Ben,

I know it's been a while since you and I last talked about the north-south boundary line between our parcels in Cleveland County, but I just want to put in writing what I think is the understanding you and I have about that matter.

When you and I were walking the property last summer we looked for the old markers, but we couldn't figure out where they were or where the line ran. The rock piles weren't there, and we could see some scars on some of the older trees but who's to say if they were blaze marks or what.

I know we talked about you and me just arbitrarily setting the boundary and agreeing that that would be it. The line we more or less decided on was a line from the southern boundary, proceeding north along Bella Creek, which is dry most of the year but changes course a bit during the winter months, to where it bends to the west, along the deer path, continuing north to the big rock on the northern boundary. I've drawn a map at the bottom of this letter.

So, as far as I'm concerned, let's agree on that. Okay? If I don't hear back from you, I'll assume it's okay with you.

Your friend,

Amos Traylor
United States Department of the Interior
Bureau of Land Management Franklin State Office
1000 Government Way
Belle Garden, Franklin 33021

May 27, 2014

Carla Flores
14562 Cedar Ridge Drive
Belleville, Franklin 33025

Dear Landowner:

The Bureau of Land Management is conducting a land survey within Cleveland County to determine the boundaries. Records indicate that you are a landowner in the area of our survey and we wish to make you aware of our presence.

Should it become necessary to enter your lands during this survey, Dale Haynes of our Maddock Field Station will attempt to contact you personally for prior permission.

Please notify Mr. Haynes of any locked gates you may have, or if you have questions regarding this survey. He may be contacted at the following address:

Maddock Field Station
332 Clarksburg Drive
Diamond Springs, Franklin 33022

Sincerely,

Cecilia S. Chen

Cecilia S. Chen Chief, Survey Branch
LIBRARY
§3346. Injuries to timber, trees, or underwood; treble damages; double damages; actual detriment

a) For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such sum as would compensate for the actual detriment, except that where the trespass was casual or involuntary, or where the defendant had probable cause to believe that the land on which the trespass was committed was his own or the land of the person in whose service or by whose direction the act was done, the measure of damages shall be twice the sum as would compensate for the actual detriment.

b) The measure of damages to be assessed against a defendant for any trespass committed while acting in reliance upon a survey of boundary lines which improperly fixes the location of a boundary line, shall be the actual detriment incurred if the trespass was committed by a defendant who relied upon a survey made by a licensed surveyor.

c) Any action for the damages specified by subdivisions (a) and (b) of this section must be commenced within five years from the date of the trespass.
Maggie Anderson brought this action to recover statutory treble damages for injuries to 39 trees in her orchard. She alleges the injuries were caused by the deliberate action of Todd Flush while moving a house along Levin Avenue, a public street, in the course of his house-moving business. The trial judge awarded double, not treble, damages. Anderson appeals the trial court's denial of treble damages. Flush also appeals, claiming that, although he damaged Anderson's trees, double damages are not mandatory and should not have been awarded.

Levin Avenue is bordered on one side by Anderson's orchard and on the other by that of John Koh. The trees in Koh's orchard bordering the avenue are interspersed with telephone poles while those of Anderson's orchard are not. Between the orchards, the paved portion of Levin Avenue is only about 15 feet wide. The damaged trees are on Anderson's property, but their branches extended over the street.

Flush observed that it would be necessary to touch the bordering trees on at least one side of Levin Avenue. He chose to strike those of Anderson because of the telephone poles on Koh's property. He thought that the house would brush by the limbs without causing any extensive damage to the trees. He sawed off some limbs to prevent them from breaking farther back near the trunks and from causing permanent damage to the trees.

The purpose of Civil Code §3346 is to protect trees and timber. The trial court held that Plush's actions were wrongful and the double damages provision of §3346 was mandatory. We agree.

There are three measures of damages depending on the nature of the trespass: (1) for willful and malicious trespass, the court may impose treble damages but must impose double damages; (2) for casual and involuntary trespass, the court must impose double damages; and (3) for trespass in reliance on a survey, actual damages.

Under §3346 the trial court has discretion to determine the circumstances under which to award treble damages. Because treble damages are punitive, the defendant must have acted willfully and maliciously.

While §3346 leaves the imposition of treble damages to the discretion of the court, it places a floor upon that discretion. Double damages
must be awarded whether the trespass be willful and malicious or casual and involuntary. The trial court was required to impose no less than double damages.

We must determine whether the trial court abused its discretion in refusing to award treble damages. It is undisputed that the branches of Anderson's trees extended over the street. Since the street is dedicated to public use to its full width irrespective of the paved portion, the trial court was justified in deciding that Flush did not act with malice or a reckless disregard of Anderson's rights. Flush, faced with the dilemma of inflicting what he believed would be slight damage to Anderson's orchard, damage to telephone poles, or blocking a public street for a substantial period of time, acted reasonably to minimize the damage. The trial court did not abuse its discretion in refusing to impose treble damages. Affirmed.
Hardway Lumber v. Thompson
Franklin Court of Appeal (1971)

Hardway Lumber appeals from a judgment awarding it double damages based on the value of timber wrongfully removed from its land, contending the trial court erred in not awarding treble damages pursuant to §3346 of the Franklin Civil Code.

Hardway entered into a 10-year contract with defendant Henry Thompson for the sale of timber on Hardway's land. Five years into the contract, Hardway properly rescinded the agreement by filing a notice with the Recorder of Deeds. While the recording provided constructive notice, it is undisputed that Thompson was never given actual notice of the rescission. Shortly after the rescission, Hardway discovered that Thompson was logging timber on its property. Hardway sued, seeking treble damages.

The trial court concluded (i) Thompson was not aware that Hardway had rescinded the logging contract; (ii) at the time Thompson removed the timber, he believed he had a right to do so; and (iii) Thompson was not acting with malice or ill will toward Hardway.

Although §3346 does not expressly so provide, Franklin courts have held that to award treble damages, the plaintiff must prove that the wrongful act was willful and malicious. Since a defendant rarely admits to such a state of mind, it must frequently be established from the circumstances. Malice may be found when a defendant performs an act with reckless disregard of or indifference to the rights of others.

For example, in Guernsey v. Wheeler (Franklin Court of Appeal 1966), the defendant had a contract permitting him to log on a parcel of land known as Sherman's Trust. Prior to removing trees, he was told repeatedly there were conflicting descriptions as to the precise location of Sherman's Trust, but he nonetheless logged a large number of trees. The trial court rejected his claim that he had probable cause to believe he was logging the land covered by his contract. We held that because the trespass was neither casual nor involuntary but was instead committed with a reckless disregard of and indifference to the rights of the owner, treble damages were appropriate. In the present case, the trial court found that Thompson's acts were not in bad faith; that his motives were not to vex, harass, annoy, or injure Hardway; and that the trespass was committed while attempting to harvest what he thought was his own
timber. The trial court did not abuse its discretion. Affirmed.
Blackjack Lumber Company v. Pearlman
Franklin Court of Appeal (1986)

Blackjack Lumber Company brought this action against Frank Pearlman to recover statutory damages for timber trespass under Franklin Civil Code §3346. Pearlman invoked the doctrine of agreed boundary as a defense. The trial court found that predecessors of the parties had agreed upon a boundary between their respective parcels, and decided in Pearlman's favor.

At issue is the boundary line between the northern and southern halves of Section 35. In 1961, Tom Majors purchased the north half from the Union Lumber Company. Majors was uncertain as to the boundary line between the two parcels. In 1962, non-licensed Union Lumber personnel undertook an informal survey of the boundary line and blazed trees (i.e., notched them with an axe) as they went across the boundary line. Majors observed the informal survey as it progressed and agreed with the line that was drawn.

In 1970, Pearlman bought the south half of Section 35 from Union Lumber and agreed with Majors that the line blazed by Union Lumber in 1962 was the boundary line. In 1973, Majors sold the north half to Blackjack Lumber. By this time, Pearlman had flagged the blazed line and the flags were clearly visible on the ground. In 1980, Pearlman conducted logging operations on his property and logged up to the blazed line. On one occasion, Pearlman asked and received Blackjack's permission to install a landing north of the blazed line for convenience in conducting his operations.

In 1982, Blackjack hired a licensed surveyor to survey the boundary line between the two halves of Section 35. This survey showed the boundary to be several hundred feet to the south of the line blazed in 1962.

In cases of uncertainty, courts look with favor upon private agreements fixing and marking boundary lines. This judicially created rule is known as the doctrine of agreed boundary. It is intended to secure repose and prevent litigation. The essential elements of the doctrine are uncertainty about the true boundary line; an agreement between adjoining landowners as to the boundary; (3) an agreed-upon boundary that is identifiable on the ground; and acceptance and acquiescence to the agreed-upon boundary for a period at least equal to the statute of limitations.

The doctrine of agreed boundary applies even where the parties intend to set the boundary along the true property line but fail to do so, due to a
mistake. Moreover, there is no requirement that the true location be unascertainable. Here, it is clear neither Majors nor Union Lumber knew the true location of the boundary line.

The trial court found that, after the line was established by Union Lumber, both Union and Majors accepted the marked line, and their successors likewise accepted it for 20 years as the correct location of the boundary line between the two parcels. Acceptance of the line by both Majors and Union Lumber and their successors is sufficient evidence to show an agreement between Majors and Union Lumber that the blazed line was in fact the agreed-upon boundary line between their respective properties. Therefore, we find that the elements for the doctrine of agreed boundary have been satisfied, and the trial court's judgment is affirmed.