

# TRESPASS TO PROPERTY

Trespass means an unlawful act committed against the property of another person and also against another person also.

## **Trespass to Property**

- 1. Trespass to Land (Immovable property)**
- 2. Trespass to Movable property**

### **Trespass to Land –**

- It means interference with the possession of land without lawful justification.
- **‘Land’**- Land includes the soil, any fixtures permanently attached to the land (Houses, walls, poles etc.), also the airspace above the land ground below up to a reasonable height and depth. [**“Cujus est solum ejus est usque ad coelum”**: Whose is the soil his is also that which is above it. This maxim does not mean any ownership over the infinite space but only means that if one owns portion of the earth’s surface, one also owns anything below or above that portion which is capable of being reduced into private ownership.]
- Trespass is a wrong against **possession** rather than ownership. It means that person in actual possession can sue even though he is not the owner.
- So, in context of Land, **trespass will be interference with possession or enjoyment of land of another**.
- The interference can be by a person himself or through some material object.
- Trespass could be by wrongful entry, by placing things on land, by animal, by remaining on the land (when you enter the land with authorization but don’t leave after authorization is revoked),
- Unlike nuisance (Which in indirect interference) trespass is direct interference and for trespass is actionable per se that means no damage has to be proved.
- **Winfield**: “If I plant a tree in your land that is trespass. But if the roots or branches of a tree on my land project into or over your land, that is a nuisance.”

## Essentials of Trespass to Land

1. **Unauthorized Entry-** It also includes unauthorized entry of **material objects**.

### **Gregory v. Piper**

Rubbish of defendant went into property of plaintiff, it was held as trespass

### **Abdul Gani v. Sadu Ram and Others**

Discharge of filthy water from the defendant's house on the plaintiff's land in trespass.

2. **Land must be in possession of plaintiff (Actual/constructive)**

Servant who has constructive possession can exclude others from the property on behalf of his master and can also sue for trespass.

The area above and below the land to a reasonable limit is also part of the land.

**Kelsen v Imperial Tobacco Co (1957)** Defendant committed trespass by allowing an advertising board to project eight inches into Plaintiff's property at ground level and another above ground level. Defendant was held liable.

**Bulli Coal Mining Co v Osborne (1899)** The Defendant mined from their land through to the P's Land. This was held to be trespass to the subsoil.

**Bernstein v. Skyviews (1978)** Plaintiff sued the defendants in trespass for taking aerial photographs from hundreds of meters above the ground of his house. The court held that at that height Plaintiff had no reasonable use of airspace and the defendant was not liable for trespass on that ground.

3. **Entry must be voluntary and intentional.**

Trespass to land is an intentional tort. However, intention for the act is required, not an intention to trespass. Consequently, deliberate entry is required and lack of knowledge as to trespass will not be a defence

### **Basely v. Clarkson**

When the defendant mowed his own land, he mistakenly crossed the boundary and mowed the land of his neighbor, believing it was his own land. The defendant's plea of mistake in claiming trespass to land failed because his act of cutting grass was intentional even though he made a mistake as to where the boundary was. However, if the entry is proven to be involuntary then it is not a trespass.

- **An involuntary trespass is not actionable**

## **Smith v stone (1647)**

Defendant was carried onto the land of plaintiff by force and violence of others, it was held that there was trespass by the people who carried Defendant onto the land, but no trespass was committed by Defendant

- **Trespass ab initio:**

- ✓ **Abuse of authority:** If one who is entitled by law to do an act abuses his authority to do it he is said to be trespass ab initio. His act is reckoned as unlawful from the very beginning however innocent his conduct may have been up to the moment of his abuse.

- ✓ **Elias vs. Pasmore (1934)**

Two police officers wanted to arrest a man and had legally entered the claimant's land in order to do so. While on the land they seized a number of items, some lawfully and some unlawfully. It was held that they had committed trespass only with regard to the documents unlawfully removed; their wrongful act did not disturb the main purpose of entry, which was to make a lawful arrest.

- ✓ In order that the entry of a person to certain premises is treated as trespass ab initio Mere nonfeasance is not enough, it is necessary that defendant must have been guilty of a positive act of misfeasance.

- ✓ **Six Carpenters Case (1610)**

- ✓ Six carpenters entered a tavern asked for wine and paid for it. After wards they asked for a second supply, but refuse to pay for it. Held that mere nonpayment was a nonfeasance which was not sufficient to render them trespasser ab initio.

- ✓ **Conditions:**

1. Authority abused must be given by the law not by an individual.
2. The abuse must amount to a positive wrongful act.

- ✓ In **Perera vs. Vandiyar** The court held that going beyond the purpose for which a person has entered also amounts to trespass.

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## Remedies for the tort of trespass include

1. **Reentry**- the person entitled to possession can enter or enter the premises in a p Sibal Manav. Does a passenger who with the use of reasonable force is made to leave the premises, can who [ hemmings versus stoke poges Golf Club]
2. **Action for ejectment/expulsion** - a person in lawful possession when dispossessed of certain immovable property without due course of law; can recover back the property within Six months of his dispossession
3. **Action for mesne profit**- apart from the right to recovery of Land by getting the trespasser ejected, a person who was wrongfully disposed of his land may also claim compensation for the laws which he has suffered during the period of disposition. Mesne Profit refers to the profit taken by the defendant during the period of Occupancy.
4. **Distress damage feasant**- this right authorizes a person in possession of a land to seize the trespassing cattle or other chattel . He can detain them until compensation has been paid to him for the damage done

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## Defences

1. **License** is express or implied permission, given by the possessor of land, to be on that land but if you enter the land with authorization (License in this case) but don't exist when the authorization is revoked, that will also constitute as trespass. This is called trespass ab initio.

2. **Jus tertii** is where the defendant can prove that the land is not possessed by the plaintiff, but by a third party. Defense only when the third person has permission of the owner.
  3. **Necessity** is the situation in which it is vital to commit the trespass;  
**Esso Petroleum Co Southport Corporation, (1956)** the captain of a ship committed trespass by allowing oil to flood a shoreline. This was necessary to protect his ship and crew. The defence of necessity was accepted. Necessity does not, however, permit a defendant to enter another's property when alternative, though less attractive, courses of action exist.
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### **Trespass to Movable Property**

- Direct physical interference with movable property in the plaintiff's possession constitutes 'Trespass to Movable Property/ goods.'
- Any person possession of goods is directly interfered with, can bring this action. So it is a wrong against the 'Right of possession' of the plaintiff. The possession could be physical or constructive, so it doesn't matter that the person suing for this wrong is not the owner because it is wrong against possession.
- **Armory v. Dalemirie (1721)**  
The chimney sweeper's boy after finding a jewel gave it to a jeweler to be valued. Court held that the boy was entitled to recover its full value from the jeweler on his refusing to return the same even when he was not the owner. It doesn't matter if wrong is committed intentionally, negligently, or even by an honest mistake.
- **Kirk v. Gregory (1876)**  
On A's death, his sister-in-law removed jewellery from the room where his dead body was lying to another room under a reasonable but mistaken belief that the same was necessary for its safety. The jewellery was stolen from the place where it was then kept. In an action by the executors of A, A's sister-in-law was held liable for trespass to the jewellery.
- **Lawful Justification and Inevitable Accident are valid Defence to the Tort of Trespass to goods.**

✓ **National Coal Board v. Evans(1951)**

The defendants, a country council, had employed certain independent contractors to make excavations on their land. Beneath the land were laid some electric cables by the plaintiff's predecessor in title, of which the defendants had no knowledge. The contractors were not aware of the underground cables. The same were damaged during excavations. The damage was caused without any fault on the part of the defendants. They were held not liable.

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• **Detinue v. Trespass**

When, the defendant is wrongfully detaining the goods belonging to the plaintiff and refuses to deliver the same on lawful demands, the plaintiff can recover the same by bringing an action for detinue. Detinue is different from trespass at certain times, **in Detinue the defendant may assume possession of the goods, but in trespass the goods remain in the possession of plaintiff only**

• **Conversion v. Trespass**

Conversion consists in willfully and without any justification dealing with the goods in such a manner that another person, who is entitled to immediate use and possession of the same, is deprived of that.

✓ **Richardson v. Atkinson, (1723)**

The defendant drew out some wine out of the plaintiff's cask and mixed water with the remainder to make good the deficiency. He was held liable for the conversion of the whole cask as he had converted part of the contents by taking them away and the remaining part by destroying their identity.

**The main difference between trespass to Goods and conversion is the degree of interference.** Conversion occurs when a person uses or alters a piece of personal property belonging to someone else without the owner's consent. The degree of interference for conversion must be so serious that the tortfeasor, or person accused of committing the tort, may be required to pay the full value of the property.