Issue 1

Did the Police have the right to enter onto Charlie’s property in order to arrest him invalidating defense of property?

Yes. Under Case Law from Wilcox v Police:[[1]](#footnote-1)

“The Civil wrong of trespass consists of setting foot on the land of another or remaining there without that other’s permission, expressed or implied, unless there is some other legal justification for doing so.”

This extract from Tipping J’s judgment specifies that if there is a legal justification for entering onto another’s property, one may do so. In this case the legal justification for the two police officers exists in both Section 39 of the Summary Offences Act 1981 and Section 317 of the Crimes Act 1961.

Section 39 of the Summary Offences Act 1981 reads:

Any constable, and all persons whom he calls in to his assistance, may arrest and take in to custody without a warrant any person whom he has good cause to suspect of having committed an offence against any of the provisions of this act except sections 17 to 20, 25, and 32 to 38.”

The police may arrest Charlie Cutthrough and take him into custody without a warrant under his breach of Section 29 of the Summary Offences Act 1981 which states:

Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding [$2,000] who is found without reasonable excuse—

(a) In or on any building; or

(b) In any enclosed yard or other such area; or

(c) In or on board any aircraft, hovercraft, or ship or ferry or other vessel, train, or vehicle.

Charlie Cuttthrough was in breach of this as he entered onto the Don’t Throw Stones glass factory despite the fact that he had been given a warning.

1. Wilcox v Police [1994] 1 NZLR 243; (1993) 10 CRNZ 704, 246; 706 per Tipping J [↑](#footnote-ref-1)