

TRESPASS TO LAND

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What is Trespass to Land?

Trespass to land, called trespass *â€œquare clausum fregitâ€* means the interference with the possession of land without lawful justification. The phrase *â€œquare clausum fregitâ€* literally means *â€œbreaking the closeâ€* of the plaintiffâ€™s land. It was held in the case of ***Onasanya vs Emmanuel*** that trespass to land is committed where the defendant, without lawful justification:

1. Enters upon the land in the plaintiffâ€™s possession.
2. Remains upon such land.
3. Directly places or projects a material object upon such land.

Acts of Trespass to Land

1. Trespass by wrongful entry: According to Salmond

â€œ| This consists of a personal entry of the defendant or by some other persons through his procurement into the land or building occupied by the plaintiffâ€™|â€

In the case of ***Entick vs Carrington***, it was held that the slightest crossing of the boundary of the plaintiffâ€™s land would also amount to trespass. The court was of the view that *â€œevery invasion of property, be it so minute, is a trespass.â€*

In the case of intentional trespass, the defendant would be liable if he entered the land or passed through it on the mistaken assumption that the land belonged to him. If the entry is not intentional, the plaintiff cannot recover compensation in trespass but in negligence.

2. Trespass by remaining on the land: A person would be liable in trespass if he enters a land lawfully and he remains there after his right of entry has expired.

In the case of ***Balogun vs Alakija***, the plaintiff was employed by the defendant to collect rents on the defendantâ€™s behalf. One evening, after business hours, the defendant went to the plaintiffâ€™s house to demand an account of the rent collected. An argument ensued and in the end, the defendant was asked to leave the premises of the plaintiff. The defendant refused to leave till about after fifteen minutes of being told to leave.

The court held that in this case, the right of the defendant to stay on the land had expired after being told to leave. By refusing to leave, his action constituted trespass and he is therefore liable.

Trespass is a wrong against possession rather than ownership. Thus, a person who has possession of a land can sue in trespass even against the owner of the land if the land was leased to him. Also, during that period, the owner cannot sue in trespass concerning that land.

In the case of ***Oguche vs Iliasu***, it was held that possession in this instance means actual possession.

Trespass ab-initio

When a person lawfully enters a land but he subsequently abuses the privilege of that law by committing some wrongful acts, he would be held liable for trespass ab-initio on that property. The rule is that the authority, having been abused by doing a wrongful act under its cover, is cancelled retrospectively such that itâ€™s exercise becomes actionable in trespass.

In other words, even though the defendant enters the land lawfully, the law presumes him to be a trespasser from the very beginning since he went there with a wrong intention in mind.

An example is NEPAâ€™s officials, police, bailiffs etc. This set of people have the right to enter upon any premises in pursuance of their duty. However, if they do something outside of their powers, it would be regarded as trespass.

3. Trespass Above and Below the Surface of The Land.

The law on this point is governed by these maxims: *â€œQuid quid plantatur solo solo ceditâ€* or *â€œcujus est solum ejus est usque ad coelum et usque ad inferosâ€*.

It means that whoever owns or possesses the land would be held to own or possess everything up to the heavens above the land and everything below the land to the center of the earth. However, this maxim cannot be taken literally both for the airspace and beneath the earth.

In the case of ***Bernstein vs Skyviews Ltd***, it was held that the maxim does not apply in a situation in which the defendantâ€™s aircraft flew several hundred feet above the plaintiffâ€™s roof. The court posited that the maxim only extends to the point of reasonable use of airspace above the land.

In ***Wollerton Ltd vs Constain Ltd***, where a crane of the defendant’s swung over the plaintiff’s roof at a distance of 50 ft, it was held to be trespass.

In ***Kelson vs Imperial Tobacco Ltd*** where a signboard on the adjacent premises protruded a few feet above the plaintiff’s premises, it was also held to be trespass.

As regards entry below the surface of the land, **Fleming** is of the view that the rule applicable to the invasion of airspace should also be applicable. This means that trespass would apply only within the area which could be reasonable used by the occupier.

Defences to Trespass to Land

1. License: This could also be construed as a consent given to another to enter upon a land. License to enter into a land could be:

- **Express:** This occurs when the owner of the land directly gives permission to the trespasser to remain upon the land in question.
- **Implied:** This is a situation in which the owner of the land acquiesces to the presence of the trespasser on the land in issue. He might not directly invite the trespasser to the land, but by his action, he would give consent.
- **Contractual:** This occurs in a situation in which entry into the land is as a result of contractual obligations. for example, if the owner of the land contracts with a plumber to have repairs carried out on the land, the plumber has the contractual right to enter upon the land. If he enters the land in the course of carrying out his obligations, he cannot be held to be trespassing on the land.

2. Right of entry: A person would have a right to entry upon a land if he has right of way. A right of way is the right a person has to go through another person’s land in order to get to his destination. It could be given by either the owner, a public right of way under common law or a right of way under statutes.

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Remedies to Trespass to Land

1. **Damages:** This is monetary compensation charged against the trespasser, to be paid to the owner of the land. It could be nominal or general.
2. **Injunction:** This is when the owner of the land seeks an order from the court to order the trespasser to leave the land being trespassed.
3. **An action for recovery of Land:** This normally occurs in land dispute situations. In this scenario, the owner of the land would bring an action against the trespasser and will have to prove that the land is for him.

SOURCES

1. Lecture delivered by Dr G.M Olatokun on Law of Torts
2. Salmonds: Law of Torts