

A driver was traveling along a highway during an unusually heavy rainstorm when the roadway began to flood. To protect his car from water damage, the driver pulled his car up a steep, unmarked driveway abutting the highway that led to a homeowner's residence. The driver left his car parked in the driveway and walked home, intending to return when the floodwater had subsided. Shortly after the driver started to walk home, the homeowner carefully rolled the car back down her driveway and parked it on the highway shoulder. The floodwater continued to rise and caused damage to the driver's car.

If the driver sues the homeowner to recover for damage to his car, is the driver likely to prevail?

- A. No, because the driver intentionally drove his car onto the homeowner's property.
- B. No, because the homeowner was privileged to remove the car from her property.
- C. Yes, because the driver was privileged to park his car on the homeowner's property.
- D. Yes, because the homeowner did not post any "no trespassing" signs.

Explanation:

Doctrine of necessity

Private necessity	An intrusion that is, or reasonably appears to be, necessary to protect oneself, third parties, or property
Public necessity	An intrusion that is, or reasonably appears to be, necessary to avert an imminent public disaster

A [trespass](#) is privileged when it arises out of **necessity**—ie, when an intrusion is, or reasonably appears to be, necessary to:

protect oneself, third parties, or property from **serious harm** (private necessity) or **avert** an imminent **public disaster** (public necessity).

A landowner cannot use force to stop a trespass arising from necessity and is liable for damages caused by force used against the trespassing person or property.

Here, the driver was privileged to park his car on the homeowner's driveway because it was, or reasonably appeared to be, necessary to protect his car from the flood (private necessity). Therefore, the homeowner had no right to forcibly remove the driver's car down her driveway and onto the highway shoulder **(Choice B)**. Since the homeowner's actions caused the car to flood, the driver will likely recover for damage to his car.

(Choice A) The driver trespassed when he intentionally drove his car onto the homeowner's property without permission. And though a landowner can generally use reasonable force to stop a trespass (ie, [defense of property](#)), the landowner cannot do so when the trespass is privileged—as seen here. Therefore, the driver's trespass does not preclude him from recovering for the damage to his car.

(Choice D) Trespass requires intent to enter the land—not intent to enter the land without the owner's consent. Therefore, the absence of "no trespassing" signs has no bearing on the driver's intent or his privilege to seek refuge on the landowner's driveway.

Educational Objective:

A landowner must permit a trespass caused by necessity—an intrusion that is, or reasonably appears to be, necessary to (1) protect oneself, third parties, or property from serious harm or (2) avert an imminent public disaster—for as long as the necessity exists.

References

Restatement (Second) of Torts § 197 (Am. Law Inst. 1965) (private necessity).

Restatement (Second) of Torts § 77 cmts. d–e (Am. Law Inst. 1965) (defense of property).

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