

A gardener's backyard, which is landscaped with expensive flowers and shrubs, is adjacent to a golf course. While a golfer was playing golf on the course, a thunderstorm suddenly began. As the golfer was returning to the clubhouse in his golf cart, lightning struck a tree on the course, and the tree began to fall in the golfer's direction. To avoid being hit by the tree, the golfer deliberately steered his cart onto the gardener's property, causing substantial damage to the gardener's expensive plants.

In an action by the gardener against the golfer for damage to his plants, will the gardener likely prevail?

- A. No, because the golfer's entry onto the gardener's property was occasioned by necessity and therefore privileged.
- B. No, because the lightning was an act of God.
- C. Yes, because the golfer's entry onto the gardener's property, though occasioned by necessity, was for the golfer's benefit.
- D. Yes, for nominal damages only, because the golfer was privileged to enter the gardener's property.

Explanation:

A defendant is generally liable for **trespass** when he/she **intentionally enters** the plaintiff's property **without permission**. A trespass may be **excused** by either of the following **privileges**:

public necessity – an intrusion that is, or reasonably appears to be, necessary to protect a large number of people from a public disaster (eg, hurricane, oil spill, spreading fire)

private necessity – an intrusion that is, or reasonably appears to be, necessary to protect oneself, third parties, or property

But when a trespass arises from **private necessity**, the trespasser remains liable for **actual damages** caused by the trespass unless the entry was for the plaintiff's benefit (eg, to protect the plaintiff's property).

Here, the golfer deliberately steered his cart onto the gardener's property without permission (trespass). However, the golfer's trespass was *privileged* because he was trying to protect himself from a tree falling in his direction (private necessity). But since the golfer's entry was for his *own* benefit—not the gardener's—the golfer is liable for damage his entry caused to the gardener's plants (actual damages).

(Choice A) Although the golfer's trespass was excused by private necessity, the golfer is still liable for the damage he caused to the gardener's plants. In contrast, the golfer would not be liable for any damages had his trespass been committed out of *public necessity*.

(Choice B) Although an act of God (an extraordinary act of nature—eg, the sudden storm) created the emergency situation that excused the golfer's trespass (private necessity), the golfer is still liable for the damage he caused to the gardener's plants.

(Choice D) When a trespass is privileged due to private necessity, the landowner can recover *actual* damages—not nominal or punitive damages.

Educational objective:

Although a trespass is excused when it arises from private necessity (an intrusion that is, or reasonably appears to be, necessary to protect oneself, third parties, or property), the trespasser is still liable for actual damages caused by the trespass unless the entry was for the landowner's benefit.

References

Restatement (Second) of Torts § 158 (Am. Law Inst. 1965) (intentional trespass).

Restatement (Second) of Torts § 196 (Am. Law Inst. 1965) (public necessity).

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

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Recoverable trespass damages

	Trespass	Private necessity	Public necessity
Nominal damages			
Actual damages			
Punitive damages			

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