

A man built a garage in his backyard that encroached two feet across the property line onto property owned by his neighbor. Thereafter, the man sold his property to a buyer. Prior to the man's sale to the buyer, the man and the neighbor were unaware that the garage encroached onto the neighbor's property.

The neighbor later learned of the encroachment and she sued the man for damages for trespass.

In this action, will the neighbor prevail?

- A. No, because the man no longer owns or possesses the garage.
- B. No, because the man was unaware of the encroachment when the garage was built.
- C. Yes, because the man knew where the garage was located, whether or not he knew where the property line was.
- D. Yes, unless the buyer was aware of the encroachment when he purchased the property.

## **Explanation:**

### **Trespass to land**

Requires proof that:

defendant intentionally entered land in question *and*  
plaintiff did not consent to entry

For **trespass to land** (ie, trespass *quare clausum fregit*), a defendant must **intentionally** enter or cause something to **enter the land** in question. If the plaintiff did **not consent** to the defendant's intentional entry, then the defendant is liable for trespass. It does not matter whether the defendant knew that the property belonged to the plaintiff or believed that the entry was permissible.

Here, the man built a garage that encroached across the neighbor's property line. Although the man did not know that the garage was on his neighbor's property, he still intended for it to be on the land in question. And since the neighbor did not consent to that entry, the man is liable for trespass.

**(Choice A)** If the defendant intentionally causes an object to enter and remain on the plaintiff's property, the defendant is liable for its continued trespass even after the defendant transfers his/her legal interest in the object to another. Since the man intentionally built his garage on the land in question, he is liable for its continued trespass even though he no longer owns it.

**(Choice B)** Trespass requires that the defendant intend to be (or cause something to be) on the property in question, but the defendant need not know that the property belongs to the plaintiff. Therefore, it does not matter whether the man knew that the garage encroached onto the neighbor's property when it was built.

**(Choice D)** A person who purchases property that encroaches onto the land of another is liable for trespass if he/she knows about the trespass and fails to remedy it. However, the sale does not absolve the seller of liability for trespass. Therefore, the man is liable for trespass even if the buyer was aware of the garage's encroachment.

### **Educational objective:**

Trespass to land requires the intent to enter the land in question, but does not also require that the defendant know that the property belongs to the plaintiff.

### **References**

Restatement (Second) of Torts § 158 (Am. Law Inst. 1965) (definition of trespass to land).

Restatement (Second) of Torts § 164 (Am. Law Inst. 1965) (trespass to land by mistake).

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