

A restaurant building was expanded into a vacant lot north of its original location. The contractor who was working on the restaurant expansion found that the north wall of the enlarged structure needed extensive support, so anchor rods and concrete were added. The supporting anchor rods and concrete extended into a neighboring property farther to the north at a point 20 feet below the surface.

Although the anchor rods and concrete did not impact the surface of his land or its existing uses, the owner of the neighboring property has sued the restaurant owner for trespass.

Which party is likely to prevail?

- A. The neighboring property owner, because he should have been given notice of the intrusion before it occurred.
- B. The neighboring property owner, because the restaurant intruded upon his property without his permission.
- C. The restaurant owner, because the decision to provide the additional support was reasonable.
- D. The restaurant owner, because the anchor rods and concrete did not disturb the neighboring property owner's peaceful enjoyment of his land.

Explanation:

Trespass is the intentional **entry** onto another's property without permission. The entry can occur **on**, **beneath**, or **above** the property.

Here, the restaurant installed supporting anchor rods and concrete that entered the neighboring property 20 feet below the surface. Since the neighboring property owner did not consent to the sub-surface entry, he will likely prevail on his trespass claim.

(Choice A) Even if the neighboring property owner had been given prior notice, he would prevail on his trespass claim if he did not consent to the intrusion.

(Choice C) The reasonableness of the decision to provide additional support may show that the restaurant owner was not negligent—eg, he used reasonable care to prevent injury to the adjacent landowner. But reasonableness is irrelevant to trespass, which requires intentional conduct.

(Choice D) Disturbance of peaceful enjoyment of the neighboring property is relevant to an action for private nuisance (a substantial and unreasonable interference with another's use or enjoyment of land)—not trespass.

Educational objective:

Trespass (an intentional entry onto another's property without permission) can occur on, beneath, or above the surface.

References

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

Restatement (Second) of Torts § 159 (Am. Law Inst.1965) (trespass on, beneath, and above the surface).

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Ways of committing trespass

