

A landowner owns a large tract of land on the shore of a lake. A woman used to live next to a stream that runs along one boundary of the landowner's tract and into the lake. A channel cuts across the landowner's tract and connects the stream to the lake. From where the woman lived, the channel served as a convenient shortcut to the lake. Erroneously believing that the channel was a public waterway, the woman used to make frequent trips through the channel in her motorboat. However, she did not harm the landowner's tract. The woman ceased using the channel when she later learned that the landowner owns it.

If the landowner asserts a claim for damages against the woman based on trespass, is the landowner likely to prevail?

- A. No, because the woman did not cause any harm to the landowner's tract.
- B. No, because the woman did not use the channel after learning of the landowner's ownership.
- C. No, because the woman used the channel when she believed it was a public waterway.
- D. Yes and the landowner is entitled to nominal damages, because the woman intentionally used the channel.

### Explanation:

A defendant is liable for **trespass to land** (ie, trespass *quare clausum fregit*) if:

the defendant intentionally entered the plaintiff's property and  
the plaintiff did not consent to the entry.

Since trespass only requires **intent to enter the property** in question—not intent to enter the property *of another*—the defendant's mistaken belief that he/she had the right to enter the property is irrelevant **(Choice C)**. Additionally, proof of **harm is not required**, so a defendant is liable for trespass even when the entry does not damage the plaintiff's land **(Choice A)**. However, the plaintiff can only recover **nominal damages** (a small sum of money—eg, \$1—awarded to vindicate the plaintiff's rights when no actual loss or damage occurred) for a harmless trespass.

Here, the woman is liable for trespass because she (1) *intentionally* used the landowner's channel and (2) did *not* have his *consent* to do so. And though her trespass did not harm the landowner's tract, the landowner can still recover *nominal damages*.

**(Choice B)** Since the woman intentionally entered the landowner's channel without his consent, she is liable for trespass. The fact that she ceased using the channel after learning of the landowner's ownership does not excuse her earlier trespass.

### Educational objective:

Trespass (an intentional entry onto another's property without permission) does not require proof of harm, but the plaintiff can only recover nominal damages for a harmless trespass. And since trespass only requires intent to enter the land, the defendant's mistaken belief that the entry was permissible is no defense.

### References

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

Restatement (Second) of Torts § 163 (Am. Law Inst. 1965) (harmless trespass).

Restatement (Second) of Torts § 164 (Am. Law Inst. 1965) (mistaken trespass).

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## Trespass liability

