

A boater, caught in a sudden storm and reasonably fearing that her boat would capsize, drove the boat up to a pier, exited the boat, and tied it to the pier. The pier was clearly marked with "No Trespassing" signs. The owner of the pier ran up to the boater and told her that the boat could not remain tied to his pier. The boater offered to pay the owner for the use of the pier but, over the boater's protest, the owner untied the boat and pushed it away from the pier. The boat was lost at sea.

Is the boater likely to prevail in an action against the owner to recover the value of the boat?

- A. No, because the owner told the boater that she could not tie her boat to the pier.
- B. No, because there was a possibility that the boat would not be damaged by the storm.
- C. Yes, because the boater offered to pay the owner for the use of his pier.
- D. Yes, because the boater was privileged to enter the owner's property to save her boat.

Explanation:

Under the doctrine of **private necessity**, a trespass to land is privileged when the **intrusion** is, or reasonably appears to be, **necessary to protect** oneself, third parties, or **property** from serious harm. The landowner cannot stop the privileged trespass and is liable to the trespasser for damages resulting from any attempt to do so.

Here, the boater tied her boat to the pier without the owner's consent (trespass) because she reasonably believed that the intrusion was necessary to protect her boat from capsizing in the sudden storm (private necessity). And though the owner had no right to stop her intrusion, he untied her boat and pushed it away from the pier, causing the boat to be lost at sea. As a result, the boater can recover the value of her boat from the owner.

(Choice A) The boater had the right to tie her boat to the pier over the owner's protest to save it from capsizing in the storm (private necessity). Therefore, the owner's objection to the boater's use of the pier is irrelevant.

(Choice B) Even if there was a possibility that the boat would not be damaged by the storm, the boater's trespass was still privileged because her intrusion *reasonably appeared* to be necessary to protect her boat.

(Choice C) A person does not have to pay to use the landowner's property for private necessity. Therefore, the owner would still be liable for damage to the boat even if the boater had not offered to pay for the use of the pier.

Educational Objective:

A landowner must permit a trespass arising from private necessity (an intrusion that is, or reasonably appears to be, necessary to protect oneself, third parties, or property from serious harm) and is liable for damages resulting from an attempt to stop a privileged trespass.

References

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

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

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Trespass excused by private necessity



Trespasser liable for broken flower pot



Landowner liable for dog bite