

## TRESPASS TO LAND: AN ANALYSIS

---

**Viraj Singh Jadon\***

### ABSTRACT

This paper examines trespass to land, defenses, and remedies. Trespass can be perpetrated in numerous manners and moods, given that the interference is straightforward and immediate. The key difference between trespass and a nuisance is sometimes difficult to be drawn. Entry onto land is barely the most obvious instance of trespass, but the real-life trespass that occurred include: objecting to things on land or inducing cattle or chattels to enter the occupied premises. The Limitation Act 1623, Section 5<sup>1</sup> provides that if the defendant implores contradiction of title to the land and if 'the trespass was by error or involuntary' and he makes a couple of sufficient amends, action against him shall be blocked. The plaintiff's consent is always a defense to a wrongful effort in trespass.

### INTRODUCTION

Trespass to land is to deliberately enter into someone's land, and continue the possession on land without permission and also without statute justification. Anyone who has the authority of land can take legal action against the tress passer under the doctrine of torts. This form of action under torts of unauthorized entry of land was known as '*trespass quare clausum fregit*' it's so because the tress passer has broken the close and trespass can only be committed on an unenclosed tract of land. If there remains a person who has the legal authority to another's land can enter, the same person commits a trespass when his entry is being restricted by the authority. Trespass to land consists of both civil and criminal liabilities relying on the laws applicable. It can be both civil or criminal as well as both of them. Trespassing to land is wrong and against the owner's authority. Any unlawful admission on someone else's land or property can result in trespass and the owner of the property can sue the trespasser if he can prove that he owns the property. *Matthew Ethernet & ors. Vs Christopher Ezirike*.<sup>2</sup> But in some lawsuits like *Soleh Boneh Ltd. vs Ayodele*<sup>3</sup>, we get to see that one who does not have possession of the land can also sue for trespass.

---

\* BALLB, FIRST YEAR, INDORE INSTITUTE OF LAW.

<sup>1</sup> The Limitations Act 1963

<sup>2</sup> (2006) LCN/3435(SC)

<sup>3</sup> (1998) JELR 42869

*Note: Even a person with wrongful possession of the land can also bring an action against the trespasser except the real owner of the land or any person acting to be the authority of the land.*

*It should also be remarked that trespass of land is a wrong repressible i.e. mere entry upon land and building under someone's authority is actionable even if no damage has been caused. Can also be stated as 'injuria sine Damnum' I.e. infringement of a legal right without any physical damage concerning money, comfort, etc.*

## **ESSENTIALS OF TRESPASS TO LAND<sup>4</sup>**

Trespass to land can be committed in any one or more of the following ways as follows:

- Unauthorized entry to someone's land.
- By abusing the right of entry.
- Projecting subject upon the land.

## **TYPES OF TRESPASS.**

**1. Trespass by wrongful entry:** This form of trespass is the most general means of trespass in which the defendant or some other party enters the enclosed or exclusive land or building of the plaintiff without his authorization. The mere entry into the boundary of the land is enough for the plaintiff to be compensated by the defendant if he sues for the same. Inyang vs Registered Trustees of the first century Gospel church.<sup>5</sup> In these trespasses intention of the defendant does not at all matter, he will be not availed to say that he acted under an honest but mistaken assumption.

**2. Abusing the right of entry:** This form of trespass signifies that if the defendant denies leaving the land after his right of authorization is over he becomes a trespasser and he'll be liable to be held as a trespasser by the plaintiff. Therefore, if the defendant misbehaves with the plaintiff regarding the land the plaintiff has the full right to revoke the right to live on the land even if the defendant doesn't quit. For example, A stranger comes to B's house to stay for a night. A allows B for the same without any restriction. The next day, unlike the deal A, refuses

---

<sup>4</sup> R.K. BANGIA

<sup>5</sup> (2005) JELR 57500 (CA)

to go and misbehaves with A and also becomes abusive, B revoked his right to stay on the property and A is held liable for trespass.

**3. Projecting any subject on the land:-**This rule signifies that even placing any mere object or material on the plaintiff's land results in trespassing.

*Note: that the act resulting in trespass should be instant and immediate without any consequence.*

If the defendant throws any object on the plaintiff's land, results in trespass but if a person gathers or piles garbage or anything near the plaintiff's property will be called a nuisance, not a tort. For example: In the case of Onasanya vs Emmanuel <sup>6</sup>the plaintiff complained that the defendant who was constructing a building, encroached on about 10 feet of land under his authorization. Further, he argued that the defendant had thrown water and allowed excreta to escape on the plaintiff's premises.

*It was judged that "throwing water was an instant and immediate act of trespassing but allowing the excreta onto the plaintiff's land was an indirect invasion and resulted in a nuisance rather than trespass."*

**4. Tress ab initio:** This rule signifies that when a lawful person with legal authorization enters the premises of the plaintiff and commits some wrong act there or we can say that if he damages the property, he'll be contemplated as a trespasser ab initio. Though he may have legal permission to enter the premises, according to the law he will be considered a trespasser from the very beginning. Elias vs Pasmore.<sup>7</sup>

*Note: The plaintiff will be allowed to be get compensated by the defendant for the wrongful act committed by him as well as for the lawful entry that is now a trespass.*

## SCOPE OF THE RESEARCH

This paper illustrates the fundamental characteristics of trespass with various landmark cases and real-life occurrences. The data collection is conducted with several case laws and court judgments related to trespass. The paper has elaborately explained the ways of trespassing the

---

<sup>6</sup> (1973) 4. CCHJ 1477

<sup>7</sup> (1934) 2 K.B. 164

land and the remedies and defenses used by the plaintiff and defendant. The central idea of this research is to brief about the scope of trespass to land.

### POTENTIAL CLIMATE

Conditions, when there is authorization to cross the boundaries of the premises of another person, is no trespass. *Madhav Vithal Kudwa Vs Madhavdas Vallabhdas*<sup>8</sup>. In this particular case, the defendant was the plaintiff's tenant. He resided on the first floor of a multi-story building. He used to park his car in the compound of the plaintiff's building. The plaintiff argued that the parking of the car in his compound without his permission is a trespass, and he sued the tenant.

*It was held that "the tenant of the multi-storeyed building has the right to use the compound without causing any inconvenience to others, as in the present case, and the right can be exercised without the permission of the landlord."*

*Note: When the occupier of the land acquiesces in frequent acts of trespass, the visitors there may no more remain trespassers.*

We may also come to see in some cases that trespass is not only a wrong against the ownership rather it is also for the actual possession and the person who is in the actual possession can also take right against the trespasser. Even the possessor of the land can also use his right against the true owner of that land. *Graham vs peat*<sup>9</sup>, In this case, the plaintiff was possessing the land under a lease that was void but was still entitled to bring an action against the trespasser(defendant) who had unlawfully crossed the limits of the land because "any possession is a legal possession against the wrongdoer."

*Note: Converse of the above is also true, That an owner of the land, who neither has possession nor any immediate right to possess it, cannot bring an action for trespass.*

Further, according to the rule of Tress ab initio if an individual enters certain premises, is treated as trespass non-feasance (I.e., omission to do something) is not only sufficient, it required that the defendant must have been sinful of a positive act of misfeasance (I.e., doing of a wrongful act.). As in the case of. In *Elias vs Pasmore*, the defendants, police officers, entered the plaintiff's premises with lawful authority to arrest him. At the premises, the police

---

<sup>8</sup> (1978)

<sup>9</sup> (1801)

officers extracted some of the documents without any legal approval, which was, an act of malfeasance.

*Note: It was stated that due to acts of malfeasance, the police officers were not wholly unjustified as they entered the premises for a lawful arrest. Therefore, they were held as trespassers only with the regard to documents they seized and not trespassers ab initio.*

## DEFENCE TO TRESPASS TO LAND

**1. Licenses:** A license is approval for entering into certain premises with the authority of the person in possession and the defendant cannot be held liable for trespass. Indian Easement Act 1882 states 'license' as under:

*"Where one person grants to another, or a to a definite number of other persons a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."<sup>10</sup>*

Hill vs Tupper <sup>11</sup>where an owner who authorizes another to enter into his property cannot sue that person for trespass.

**2. Laches:** This can be stated as an unpredictable delay in the execution of the right against the trespass which is lost after the exclusive time given by the law. For a successful plea of laches, the plaintiff should have in his knowledge all the validities, providing him with a course of action. He must have failed in exercising his right so it can be inferred that he has lost his right.

*Note: Statutory prescriptions are to be considered as per the circumstances of each case. For example in the case of Manko vs Bonso*

It was held that "The delay of twenty-two years was too long". The plaintiffs knew about the voidable sale of a family land sold in 1885 and they came to know in the year 1914 and brought an action in 1936.

---

<sup>10</sup> Section 52 of Indian Easement Act 1882

<sup>11</sup> (1863)

**3. Acquiescence:** These sorts of defenses share similar elements just like the laches which means that the person is taking permission or we can say assent on behalf of the plaintiff. Like in the case *Duke of Leeds vs. Early of Amherst*<sup>12</sup>, It was held that:

*"if a party having a right, stands by and sees another dealing with the property in a manner inconsistent with that right and makes no objection, while the acts are in progress, he cannot afterward complain. That is the proper sense of the word."*

*Note: Though Acquiescence shares a couple of elements with laches but it has four more elements namely:*

- Presumption on the part of the defendant that he is the real owner.
- The amount for maintenance regarding the supervision of the land paid by the defendant comes to the knowledge of the plaintiff.
- The activities and acts of possession by the defendant come from the knowledge of the plaintiff.
- Executions of rights and powers of the plaintiff show the defection of his rights by the defendant.

**4. Justification (by law):** This type of defense is mainly referred to as legal and justified permission granted by the law to a person so that the acts which would otherwise be declared as trespass are not trespass. Like the powers of Income Tax officers.<sup>13</sup>

**5. Jus Tertii:** In this type of defense the trespasser has the claim that he has the authorization of a third party who has a better title to enter the land.

#### **REMEDIES TOR.K. TRESPASS TO LAND<sup>14</sup>**

Generally, in trespass, the defendant is sued by the plaintiff for damages and injunction. Damages and Injunctions are known as the judicial remedies provided to the plaintiff by the court of law to restrain the tortious activities of the defendant.

*Note: There are two types of remedies namely -judicial remedies and Extrajudicial remedies.*

---

<sup>12</sup> (1846)

<sup>13</sup> Under The IT Act of India

<sup>14</sup> R.K. BANGIA

The possessor of the land may also enjoy certain extrajudicial reliefs, recognized under the common law namely: Action for Ejectment and Distress Damage Feasant.

**1. DAMAGES:** As we know that trespass to land is a type of wrong which is actionable per se means, that it needs no proof. Due to trespass, the plaintiff has suffered special damage, the plaintiff has to specifically defend himself and prove such extra damage which should be part of his argument.

**2. INJUNCTIVE RELIEF(INJUNCTION):** An injunction is a remedy granted to the plaintiff against the defendant in which the court prohibits the continuation of tortious acts performed by him. Whenever the plaintiff applies for an injunction, he must accurately explain the scope that is to be covered by the injunction. An injunction sued by the plaintiff is sometimes temporary or perpetual.

**3. ACTION FOR EJECTMENT:** Forcible ejectment or Action for ejectment is a sort of remedy which gives a speedy remedy to the plaintiff who has been dispossessed by the defendant from any immovable property, Specific Relief Act, 1963 states that "If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such a suit. No suit under this section shall be brought after the expiry of six months from the date of dispossession"<sup>15</sup> the plaintiff can also recover back his property without establishing any title.

**4. DISTRESS DAMAGE FEASANT:** This remedy gives the plaintiff or the real owner of the property a right to seize the trespassing cattle or other chattels which cause any damage to the property and the same can be returned until the compensation is received from the defendant. The idea of sizing the trespassing object is to force the defendant to give compensation for the damage caused by the object for example dog, horse, football, or even a railway engine. This aspect of detaining the trespassing object is not only restricted for the damage caused to land but the same compensation can be reversed for damage done to the cattle as well. Thus, in the case of *Boden vs Roscoe*, the real possessor of the land was held entitled to detain a horse, after trespassing has kicked his filly until the compensation for the damage caused was paid.

---

<sup>15</sup> Section 6 of Specific Relief Act , 1963

## CONCLUSION

The truth or we can say the lawful owner of the land is assumed to own everything beneath his land till the crust and above his land till heaven. This is expressed by the maxim "cuius est solum, eius est usque ad coelum et ad infernos". Furtherance of the case of Corbett vs Hill.<sup>16</sup> Thus, any digging onto the land and any interference in the airspace above the land results in trespasses like extracting minerals from someone's land or gliding aircraft above the land respectively.

*Note: These rules are ineffective in today's modern-day world as these activities are now stated very ordinary nowadays. Even 100 years ago described as "fanciful" by Bowen l.j. in Wadsworth Board of works vs United Telephone company Ltd.<sup>17</sup>*

Therefore, it has prevailed that the right of a lawful owner of the land is limited to only such a height where it is required for the enjoyment purpose and building thereon. Gradually it came into the law that merely flying an aircraft several hundred feet above the occupied land will not be concluded as a trespass. In the case of Bernstein vs Sky views and General Ltd.<sup>18</sup>

*Note: However an aircraft or anything that falls on that occupied ground results in trespass.*

*"No action shall lie in respect of trespass or nuisance by reason only of, or of the ordinary incidents of the flight of an aircraft over any property at a height above the ground which is reasonable having regard to wind, weather, and all circumstances of the case"<sup>19</sup>*

*"Where loss or damages is caused to any person or property on land or water by a person in or an article of a person falling from aircraft while in flight, taking off or landing then without prejudice to the case of contributory negligence, damages, in respect of the loss or damages shall be recoverable without proof of negligence or intention"<sup>20</sup>*

---

<sup>16</sup> (1870)

<sup>17</sup> (1884)

<sup>18</sup> (1977)

<sup>19</sup> Section 49(1)

<sup>20</sup> Section 49(2)