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LAW OF TORTS AND CONSUMER PROTECTION
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TOPIC: Trespass

Introduction

Trespass is one of the ancient forms of action that arose under the common law of England as early as the 13th century. It was considered a breach of the king's peace for which the wrongdoer might be summoned before the king's court to respond in a civil proceeding for the harm caused, because the king's court were primarily interested in land ownership disputes, the more personal action of trespass developed slowly at first. Around the middle of the 14th century, the clerks of the king's courts began routinely giving out writs that permitted a plaintiff to begin a trespass action. Before that time criminal remedies for trespass were more common. The courts were primarily concerned with punishing the trespassers rather than compensating the land owner. From the beginning a defendant convicted of trespass was fined; a defendant who could not pay the fine was imprisoned. The fine in this criminal proceeding developed into an award of damages to the plaintiff. This change marked the beginning of tort action under the common law.

Meaning and Definition

Trespass is the direct interference with another person or his property, which infringes the person's right to enjoyment of his land, possession of his goods or freedom of movement,

Trespass is accountable per se.

This means that the claimant only needs to show that the trespass occurred, although it is not necessary to show that the defendant caused any damage or injury.

Definition of Trespass of Land :-

General

Trespass to land occurs where a person directly enters upon another's land without permission, or remains upon the land, or places or projects any objection upon the land.

According to Ratanlal:- “ It is an unwarrantable entry upon the land of another or any direct or immediate act of interference with the possessions of land.”

Winfield, “ Trespass to land is the name given to that form of trespass which is constituted by unjustifiable interference with the possession of land”.

Street, “Intentionally or negligently entering or remaining on , or directly causing contact with land in the possession of another is a trespass.

Trespass is both a civil and criminal wrong because it can cause injury , i.e. violation of legal rights as well as damage to one's person and property sustainably if a physical attack takes place.

Distinguishes criminal trespass from civil trespass is that in the former, the entry should be with intent to commit an offence or to intimidate , insult or annoy the person in possession of the property.

Trespass is an area of criminal law or tort law broadly divided into three groups: trespass to the person, trespass to chattels and trespass to land.

Generally, trespass to the person consists of three torts: assault, battery and false imprisonment.

Assault:- Under the statutes of various common law jurisdiction, assault is both a crime and a tort. Generally, a person commits criminal assault if he purposely , knowingly , or recklessly inflicts bodily injury upon another , if he negligently inflicts bodily injury upon another by means of dangerous weapon; or if through physical menace, he places another in fear of imminent serious bodily injury. unreasonable fear. Sec. 351 of IPC defines assault.

Essentials of assault include :- Intent , Apparently ability to carry out the purpose , Apprehension , Knowledge of threat.

Battery :- The use of force on the person of another without lawful justification. Battery consists of touching another person hostilely or against his will directly or indirectly, however, slightly. Direct force can be like slapping a person whereas indirect force is like setting a dog behind a person or spitting on a person. Battery corresponds to 'use of criminal force' according to the Sec. 350 of the IPC. What is necessary is that the wrongful act must involve physical contact.

Essentials of battery include :-

Direct or indirect physical contact without lawful jurisdiction

Use of force

It must be voluntary

Accidental touch or push in the market is not wrongful and doesn't constitute battery.

False imprisonment:- When someone's way is restricted unlawfully from all possible directions so as to prevent him/her from moving in a direction for some period, however short, it is called false imprisonment. In the IPC, it is defined as wrongful confinement.

Article 22 of the Indian Constitution provides for protection against unlawful arrest and casts an obligation upon the state to follow due procedure while carrying out arrest related activities. Sec. 43, Cr.PC provides for arrest by a private person if he offends and is alleged to be liable for a cognizable and nonbailable offence.

Essentials : Complete restraint of liberty of person and unlawful restriction.

Trespass to chattels, also known as trespass to goods or trespass to personal property, is defined as "an intentional interference with the possession of personal property... proximately causing injury. While originally a remedy for the asportation of personal property, the tort grew to incorporate any interference with the personal property of another.

Generally, trespass to chattels possesses three elements:

- **Lack of consent:** The interference with the property must be non-consensual.
- **Actual harm** the interference with the property must result in an actual harm.
- **Intentionality:** The interference must be intentional.

Trespass to chattels typically applies to tangible property and allows owners such property to seek relief when a third party intentionally interferes or intermeddles in the owner's possession of his personal property. "Interference" is often interpreted as the "taking" or

“destroying” of goods, but can be as minor as “touching” or “moving” them in the right circumstances. In *Kirk v Gergory* the defendant moved jewelry from one room to another, where it was stolen. The deceased owner’s executor successfully sued her for trespass to chattel.

Remedies for trespass to chattel include damages, liability for conversion, and injunction, depending on the nature of the interference.

Trespass to land :- Trespass to land is one of the oldest actions known to the common law (although it no longer is a crime at common law) and can be defined as an unauthorised interference with a persons possession of land.

It is the direct invasion of possession which is actionable , thus , once the invasion has been proved. It is for the defendant (the person committing the invasion) to justify his actions.

There has to be an intention to interfere with the right of possessions, thus involuntary actions are not actionable. Trespass to land does not require proof of damage for it to be actionable. Thus, the defendant can’t claim that he entered the land reasonably and / or with due care.

Modes of Trespass to land :- Trespass to land may be committed in one of the three ways :-

Trespass by wrongful entry

A wrongful personal entry by the defendant on the plaintiff’s land amounts to trespass. The slightest crossing of boundary is suffices, e.g. sitting on a fence amounts to trespass, and no actual damage need to be proved. Walking onto land without permission, or

refusing to leave when permission has been withdrawal, or throwing objects onto land are all example of trespass to land.

- Basely v/ Clarkson (1681)
- D owned land adjoining C's and whilst mowing his own lawn he involuntarily and by mistake mowed (cut with a blade or mower) down some grass on the C's land. C was successful in claiming against trespass. This case is also an example of mistake entry.

Trespass by remaining on the land

A person who has lawfully entered on the land in a possession of another commits a trespass if he remains there after his right of entry has ceased. Thus a person who has entered by liecense of the occupier will be liable as a trespasser if after request he fails to leave the premises.

Trespass by placing things on the land.

It is a trespass to cause any physical objects across the boundary of the plaintiffs land or even to come into physical contact with the plaintiff's land even though there may be no crossing of the boundary.

Essentials of trespass to land :-

Trespass to land essentially involves some form of interference with land and like the other forms of trespass, is accountable per se, so there doesn't need to be any actual damage to the land.

- The elements of the tort are :-
- The claim must involve land
- The land must be in the claimant's possessions
- The defendant must interfere with the land.

Land :- Land includes not only the soil itself, but things under it, any building that is fixed to the surface, and such air space above needed for the normal use of the enjoyment of land any structure on it.

In *Anchor Brewhouse Developments Ltd v Berkeley House (Docklands Developments) Ltd* 1987 for example, the boom of Berkeley's crane over sailed Anchor Brewhouse's land and was held to constitute a trespass. It is not necessary to show damage to obtain an injunction for trespass. Anchor Brewhouse succeeded in obtaining the injunction they were looking for as the court found no special circumstances to prevent the injunction.

Possessions:- The claimant need not own the land, but must be in possession on it . Possession to exclude others from the land and it must exist at the time the trespass is committed. For ex. If someone trespass on rented ,land doesn't amount to possession for the purpose of the trespass i.e. a guest in a hotel.

Interference :- The interference must be direct and physical, indirect interference may give rise to an action for negligence or nuisance but not for trespass.

- For ex. Your next door neighbour prunes their roses and throws the clippings into your garden that may be trespass however , if they simply fail to prune them so that they overhang your garden. That may be nuisance , but not the trespass.
- Proof of damage :-
- Trespass is actionable per se, damage need not be proved to sustain the action.
- Example, A public road is to be used only for passage . A person using it for other purposes commits trespass, similarly starting in at other's window affects the right of privacy. Thus amounts

to trespass. **The following are the defences that may be available to defendant in an action of trespass.**

Leave and license:- This is a permission which makes lawful that which would otherwise be unlawful. Thus a person who enters the land by way of license will not be a trespasser. However if that person remains on the land after the license has expired or has been revoked or he exceeds the condition of the license, that person will become a trespasser.

It is a good defense to an action for trespass. A license only makes an act lawful which, without it, would be unlawful. A license may be either express, as in the case of a guest in the house, or implied, as in the case of customer entering in a shop.

To enter "In land law" a license is given by X, the occupier of land, gives Y permission to perform an act which, in other circumstances, would be considered a trespass e.g., When X allows Y to reside X's house as a lodger. A bare license is merely gratuitous permission. A license may be coupled with an interest, as where X sells standing timber to Y on condition that Y is to remove the timber; in the case the sale implies the grant of a license to Y to enter X's land.

- Street v. Mountford (1985) AC 809
- **Consent :-**
- A person or claimant who agrees to a certain action can't complain or sue.
- Peter v. Prince of Wales Theatre Ltd. (12)
- The defendant employed a sprinkler system to protect the building from fire. The claimant also occupied the building and complained when the stock was damaged by water from the sprinklers.

- It was held that the water supply benefited both the claimant and defendant and therefore there was no liability.

Act of Public Necessity :-

Entry on the land of another person without his consent is justifiable on the ground of public necessity. A person is not guilty of trespass if he goes on to another's land to protect life or property during an emergency for ex. A passer by who sees someone pointing a gun at another person may cross on to the property and sub due the person with the gun someone at the scene of the traffic accident may go on to private property to pull a victim from one of the vehicles .

- Necessity is a defense to show that it was necessary for the defendant to enter the claimants land .
- Trespass may not arise where there is actual / perceived danger in relation to which steps are taken.
- For example, in case of fire , one may get in to another person's land to prevent further harm.
- IN RIGBY v CHIEF CONSTABLE OF NORTHAMPTONSHIRE

Facts :- A young man broke into a gun shop and armed himself , the police fired a canister of CS Gas into the shop so as to smoke out the young man unfortunately , the shop caught fire and the shop keeper sued for damages.

Held It was held that the police could on the defense of necessity because the boy was a clear threat to the public and since the police had not contributed to the problem , they were not liable it was held that necessity was a defence provided that there was no negligence on the part of the defendant in contributing to the state of necessity, thus the action for trespass failed.

Prescriptions

In an action for trespass a defendant may plead that he was justified by reason of prescription as by showing a right of common or right of way over the land,

Special property and easement

A guarantee of easement may enter upon the servant (subordinate) Tenement (Apartment house). In order to do necessary repairs and is a good defence to an action for trespass a land lord doesn't have the right to enter a tenants apartments whenever the landlord wants however, the land lord usually has the right to enter make repairs the land lord must arrange a reasonable time for the repairs but the tenants consents to this encroachment is either contained in the lease or is implied from the land lord assumptions as responsibility for making repairs inside the apartment.

Recaption

If a person takes away the goods of another upon his land he gives to the owner of them an implied license to enter for the purpose of recaption. Similarly if the goods are on the land of another in the pursuance of a felonious (involving, being or having the nature of a crime) Act of a third person, the entry will be justifiable.

Re entry on land

An owner who has been wrongfully disposed may re enter on his land and if he does so he can't be sued for trespass by the person who has been wrongfully there.

Self defense

If a person has actual possession of goods chattels or animals and another wrongfully attempts to take the same from him. He is

justified in using such force as is necessary for the purpose of defending his own position.

Abetment of nuisance

An occupier of land may, with prior notice enter upon another's adjoining land for the purpose of removing the nuisance upon it.

Authority of law

Acts which would otherwise be trespass are not so when justification is provided for by the law.

Where a defendant is legally authorised to enter on to the claimant's land by statutory authority he can't be liable for trespass on land. The police have powers under the Police and Criminal Evidence Act 1984 to enter premises and search them. Abuse of the legal authorities is punishable when one has initial authority, then later does something unlawful. It results in a doctrine known as *ab initio*.

- **Remedies**
- **Damages**

If the trespass is trivial or there is no actual damage the damage will be nominal. If the damage is done to the land the measure of damages is usually the value of the land or such amount as will compensate the plaintiff for his loss, the cost of reinstatement for example. Rebuilding will sometimes be the correct measure. Exemplary damages may have been awarded where there has been arbitrary or unconstitutional trespass by a government official or where the defendant acted cynically (showing contempt for accepted moral standards). This regards the plaintiff's rights with the object of making a gain from unlawful conduct.

A plaintiff may bring an action to claim damages for his loss during the period of dispossession. The compensation will be for the value of the use of the land and the occupation of the land, plus any damages itself.

An injunction

- To prevent further acts of trespass (at the discretion of the court)
- The court may order the defendant to move from the claimant's land. It is a remedy to prevent further trespass in cases of threatened trespass where the trespass is of continuing nature. The claimant may seek an injunction.
- An action for the recovery of the land.
- If a person has been deprived of lawful possession of the land (formally known as ejection)

Expulsion :-

The person who is entitled to possession may request a trespasser to leave and if the trespasser refuses, may remove him from the land, using no more force than is reasonably necessary. However, if the force used in turning out a trespasser upon the person removed.

Re-entry

The person entitled to possession can enter or re-enter the premises. He must do so in a peaceful manner subject to the common law rights to eject a trespasser.

Self Help:-

The party in possession may use reasonable force to resist wrongful entry by a trespasser e.g. by erecting fences and putting on barbed

wire fences. In cases of security dogs, he should have control over it and notify people about the dog in every entrance.

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