



Trespass to Land

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Konomark
Most rights sharable

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The defendant

(1) intentionally

(2) caused an intrusion, either by entry onto or failure to leave or remove from,

(3) plaintiff's real property.

Intent

All you need is intent for the entry.

Not intent to trespass!

Contrast this with battery.

Ex.: Kicking a box with a child hiding inside.

Entry

Can include:

Going to an off-limits part of property you're allowed to be on.

Doing something with a fixture you're not allowed to do.

Subsurface (horizontal oil & gas drilling)

Overhead (drone encroachment)

Omissions - failure to leave, failure to remove

Damages and Scope of Recovery

- **Allows what is in essence strict liability for damage caused during a trespass.**
- **This is a very powerful way to recover for accidental damage that we didn't cover under negligence or strict liability.**

Some quick problems

A person you thought was an employee directs you to a back bathroom ...

You climb shelves to reach something high up in a store ...

You cut down a tree on your own property, but you aren't good at cutting trees and predicting where they will fall, and the tree falls on to your neighbor's property ...

Boring v. Google

- See this as a straightforward case of trespass to land.
- Further consider the role of intentional torts in providing a private means of redress for being “messed with”
- And see a further example of a court expressing concern about that role (lower court, not the 3d Cir.)
- Consider through the lens of *for forgiveness than ask for permission.*

From the casebook ... p, 225

D. New technologies are often fraught with potential legal liabilities. At one time, it was an open question as to whether a search engine like Google would violate copyright by caching copies of websites and linking to them with a snippet of representative text. Instead of seeking permission from relevant parties or lobbying for a change in the law, many technology companies follow an unwritten motto of, “Innovate first, beg for forgiveness later.” Did that work here? What do you think would have happened if, prior to launching its Street View service, Google had lobbied Congress for a statute specifically providing for the service’s lawfulness? What if Google had sent letters out to municipalities and residents letting them know that the Street View imaging vehicle was coming, and asking them to flag potential issues for them?

From the casebook ... p, 225

Problem: Champagne Whooshes

1. What do you recommend the Wangs do about their problem? Do they have a viable lawsuit against anyone?
2. Suppose Air Adventures, Buoyant Breakfasts, and Champagne Celebrations are the three companies that operate balloon charters that frequently end up over the Wangs' house. Imagine that Buoyant Breakfasts offers to stop flying Mondays through Wednesday and to pay the Wangs a token license fee for all other days. What should the Wangs do with the offer?