



# Trespass to Land

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Konomark  
Most rights sharable

Trespass to Land

## Trespass to Land

The defendant

- (1) intentionally
- (2) caused an intrusion, either by entry onto or failure to leave or remove from,
- (3) plaintiff's real property.

# Trespass to Land

(re-ordered)

- (1) With plaintiff's real property,
- (2) defendant has caused an intrusion, either by entry onto or failure to leave or remove from,
- (3) intentionally.

Sometimes I like going in the reverse order. It can be easier.

## Real property

- Tangible “immovable” property
  - as opposed to chattels (moveable tangible property)
- Land
- Buildings and improvements
- Fixtures
- Subsurface to the center of Earth
- Above surface to a reasonable distance

# Intrusion – entry

## Can include:

Entering someone's property without permission.

Where you're invited to be on someone's property, going to an off-limits place—some part of the property where you aren't permitted.

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

Subsurface (e.g., horizontal oil & gas drilling)

Overhead (e.g., drone encroachment)

Omissions – failure to leave, failure to remove

# 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.

**We're going to dig deeper into intent.  
Hold on – that's coming up in a bit ...**

## Remedies and scope of recovery

- You don't need any injury. You can get mere nominal damages. But bear in mind ...
- Trespass to land remedies can be very powerful!
- Recovery for damages caused by the trespass can function like strict liability for damage caused during a trespass. This can be an important way to recover for accidental damage independent of negligence or strict liability causes of action!
- You can also get things like rental value, compensation for emotional distress / annoyance / discomfort, and injunctions!
  - (And injunctions can be worth money – as leverage to get the defendant to cut a big check.)

## Some quick problems

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

You climb installed shelving to reach something high up in a store ...

You drive a snowmobile along the edge of your property line, and then you hit a concealed fencepost in the snow and your snowmobile careens out of control over the property line and on to your neighbor's property. You immediately drag the snowmobile back over to your side ...

# Boring v. Google



**Let's do some problems  
on intent to help you get  
the concept.**

**Intent problem: Danny places the puck**

Danny doesn't intend to trespass, but Danny does intend to place a hockey puck on piece of land "X," and he does so. Piece of land "X" is owned by Pilar, and Pilar hasn't given Danny permission to place the puck on piece of land "X."

Is there requisite intent for trespass to land?

- A. Yes
- B. No

### Intent problem: Danny places the puck

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B. No

Is there a winning case for trespass to land for Pilar against Danny on these facts?

A. Yes

B. No

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### Intent problem: Danny fumbles the football

Trespass to Land

Danny doesn't intend to trespass, but Danny does intend to throw a football up in the air and catch it on and over piece of land "Y." After a few minutes of doing this, Danny fumbles the ball, accidentally dropping it so it falls on piece of land "X." Piece of land "X" is owned by Pilar, and Pilar hasn't given Danny permission to place anything on piece of land "X."

Is there requisite intent for trespass to land?

A. Yes

B. No



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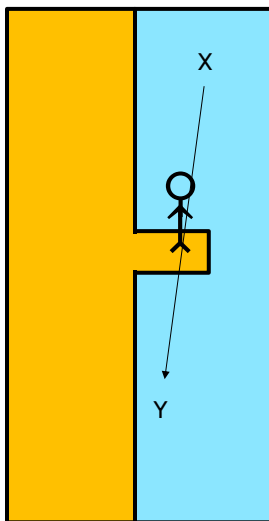
Is there a winning case for trespass to land for Pilar against Danny on these facts?

A. Yes

B. No ←

### Intent problem: Nora and the notch

Trespass to Land



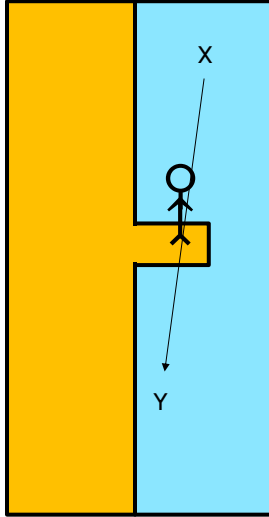
Nora owns Blueacre (right). Oren owns Orangeacre (left). Nora believes Blueacre is a rectangle, and her belief in this regard is supported by a land survey she paid for, an attorney opinion, and county land records. But in fact, Oren owns a notch that extends Orangeacre into what Nora believes to be the rectangular tract of Blueacre. With her subjective belief that she is staying on her property, Nora walks from point X to point Y, with the purpose of moving from one point to the other in a straight line. As a result, she transits the notch. Is there requisite intent for trespass to land?

A. Yes

B. No

### Intent problem: Nora and the notch

Trespass to Land

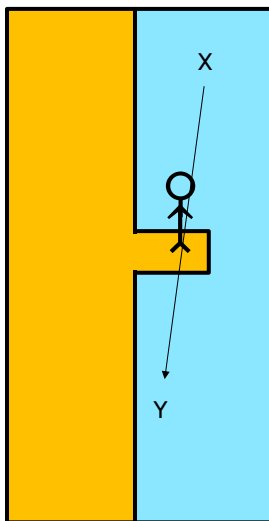


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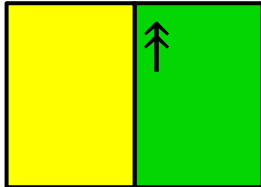
**Nora meant to walk where she did. So that counts as the requisite intent for trespass to land.**

- A. Yes ←
- B. No

## Intent problem: Glen's pine tree

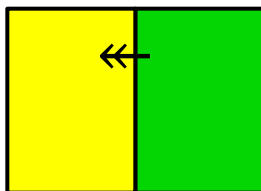
Trespass to Land

Before:



Glen owns Greenacre (right). Yelena owns Yellowacre (left). Glen went out and bought a chainsaw. A hasty doofus, Glen started using the chainsaw to cut down the pictured pine tree. He didn't read the instruction manual, watch videos, or learn anything about how to fell a tree. He started sawing the tree with the subjective intent that it would fall on Greenacre. But because he did it wrong, it fell on Yellowacre. In fact, the objectively reasonable person would have known, exercising due care, that the tree would have fallen on Yellowacre. But Glen was too ignorant to comprehend what would happen. Is there requisite intent for trespass to land?

After:

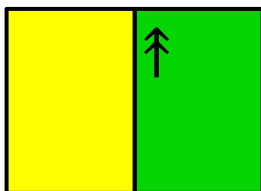


- A. Yes
- B. No

## Intent problem: Glen's pine tree

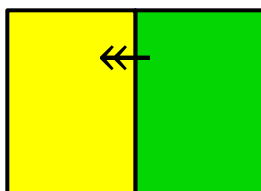
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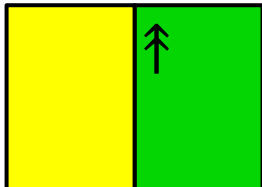


- A. Yes
- B. No ←

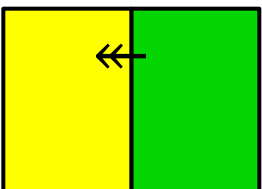
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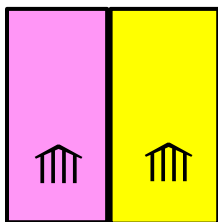
*Glen didn't act with the purpose of having the tree end up where it did, and he didn't have substantial certainty that it would end up where it did, so he doesn't have the requisite intent.*

A. Yes

B. No ←

## Intent problem: Mitch's mistake #1

Trespass to Land



Mitch has a demolition business. He was hired by Ajax to demolish a shed on Pinkacre (left). "I sure don't want to trespass," Mitch said. So Ajax signed a written contract that provided, "I, Ajax, hereby represent, warrant, and certify that Mitch has permission to demolish the shed on Pinkacre, and I agree to indemnify Mitch for any tort claim that may result from Mitch undertaking the activity that is the subject of this contract." Mitch thought everything was on the up and up. He demolished the Pinkacre shed on purpose, using his bulldozer. It turns out Ajax had no lawful authority to authorize the demolition of the shed, which, along with the rest of Pinkacre, was owned by Polly.

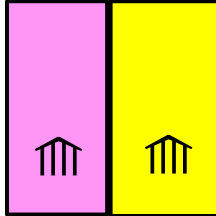
Is there requisite intent for trespass to land in a suit brought by Polly against Mitch?

A. Yes

B. No

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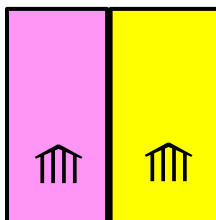
Is there requisite intent for trespass to land in a suit brought by Polly against Mitch?

A. Yes ←

B. No

### Intent problem: Mitch's mistake #2

Trespass to Land



After demolishing the shed on Pinkacre, Mitch carelessly left the engine running on his bulldozer. The transmission slipped (because of Mitch's negligent maintenance of the machine), and the bulldozer moved over to Goldacre (right), owned by Golda, where it destroyed Golda's shed.

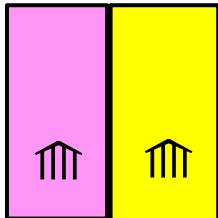
Is there requisite intent for trespass to land in a suit brought by Golda against Mitch?

A. Yes

B. No

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Is there requisite intent for trespass to land in a suit brought by Golda against Mitch?

A. Yes

B. No ←

Trespass to Land

Do you feel like you have the concept for intent for trespass to land?

A. Yes

B. No

## 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?