



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

SUBJECT CODE: BAL 106

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LECTURE 13

TOPIC: CLASSIFICATION OF TORTS- TRESPASS, NUISANCE, DEFAMATION, LIABILITY FOR MIS- STATEMENTS, NEGLIGENCE.

Trespass to Land

The tort of trespass can be defined as an unjustifiable physical interference of land in possession of one party by another. Under English common law where these principles of torts emanate, trespass does not form a criminal act but in the Indian Penal Code it has been given recognition i.e. under section 441. But it defines trespass as unjustifiable physical interference with the possession of property of the claimant with requisite intention of doing so. The Intention part is present due to it being under a criminal code where in 'mens rea' is a part.

Under English Common Law the maxim that is used for trespass is 'trespass quare clausam fregit' which means "because he (the defendant) broke or entered into the close"[8]. The tort of trespass requires essentially only the possession of land by the plaintiff and just encroachment by some way by the defendant. There requires no force, unlawful intention or damage nor the breaking of an enclosure. The express mention of the word interference is mainly there to imply permission. Permission to encroach onto one's land can either be obtained by the person in possession or by virtue of authority.

One of the most important ingredients of a tort of trespass is the fact that the land in question which has been encroached upon essentially needs to be in the direct possession of the plaintiff and not just mere physical presence on it. For example it is to

be noted that a cause of action in a suit for trespass does not arise in the case where a servant is staying on his masters property[9]. But a tenant of a property can bring about a cause of action against anyone encroaching onto his property during the period of his lease and even against the lessor if express conditions in the contract empower him to[10]. Lessor –Lessee Relationship

Another essential provision of the tort of trespass includes in the directness of the act. If the act is direct i.e. arising out of the natural consequences of the act of the defendant then it is valid. If the consequences of the act are a result of a remote effect of an act then it is not held to be a valid suit. So, if the defendant erects up a tree which leads to growing of branches and boughs and roots onto the land of the claimant then it is not held to be trespass but nuisance. There is a thin line between nuisance and trespass. Trespass is encroachment upon property whereas nuisance is interference upon another's right to enjoy his property. This is the test to be applied to segregate the tort of trespass from the tort of nuisance. But it is worthy of being noted that directly causing an object to enter onto another's land does amount to trespass. Therefore, if a person's hounds enter the other's land and there was requisite intention of making the hounds enter or there was negligence in taking care of the hounds so as to enable them to enter onto another's land it forms the tort of trespass. Here it should be seen that it is a direct act as either the encouragement or the negligent act of not taking due care of the hounds to enter onto the plaintiff's land lead to the consequence of trespass. Henceforth it can be ruled out that there was any intervening act.

It is a well-known principle that if a person enters upon another's land and stays on it, the act is connoted as continuing trespass. So, either placing goods on the plaintiff's land and not removing them or staying on the plaintiff's land and not moving way form's continuing trespass. It was seen in the case of *Homes V. Wilson* that authorities had constructed a road/bridge and to support such infrastructure had erected buttresses on the plaintiff's land and had not removed them. The authorities were liable to pay full compensation and had a further action in continuing trespass in which they were held liable. The act of continuing trespass remains until such object or act is removed or stopped respectively.

Furthermore the owner of a land is entitled to the airspace above him but he is aerial trespass has a very important ingredient which is that the object that enters his land aerially should be at such height that it violates his right to enjoy his property and moreover violate his right of ordinary use of his land. Therefore, it can be said that an airplane that is passing at a height over the plaintiff's land cannot for the act of trespass, because it does not violate the plaintiff' ordinary use of his land.

The subject matter for an action is a notable point. Merely walking on a land possessed by the plaintiff forms a tort as it involves encroaching upon the legal right to own property. The general principle of subject matter was prescribed in the many cases. It was held that anything associated with the soil and which is capable of being possessed individually forms the subject matter in the tort. Therefore, if there is any damage incurred upon any object which is associated with the land of the plaintiff an action in trespass may be instituted

There are many remedies to the tort of trespass:

- a) **Damages** – The claimant is entitled to full reparation for his loss incurred. Generally, depreciation in the selling value is an adequate measure for destruction or damage to the subject matter's in course of the tort of trespass. If there is an adverse effect onto business due to trespass the claimant is entitled to recover the profits which were lost. This is called special damages.
- b) **Injunctions** – These are present for in the case of trespasses to restrain the trespasser. As it was seen in the case of Nelson V. Nicholson where the Plaintiff had resolved a dispute over the boundary with the defendant. In resolving this dispute, it became apparent that the defendant had planted a tree on the plaintiff's land. The plaintiff filed for a mandatory injunction against D to get the bush removed.
- c) **Trespass to Person** - English law knows no tort of intention although it does acknowledge a tort of negligence. The explanation of the paradox is historical. Until The middle of the last century and before the forms of action were

abolished, wrong doing was remedied by variants of trespass or case. Liability for intentional conduct was distributed among these two and over the years some form of liability for intention acquired special names, such as assault and battery, etc. That did not happen with careless conduct, which fell under trespass or case depending on whether the resulting harm was direct or consequential.

The tort of trespass then was empowered to encompass the wrongs such as

a) Assault

b) Battery

c) False Imprisonment

The perquisites for these acts all fall under the categories that have been prescribed under the basic principle of this is that there should be a requisite intention to cause harm or there should be a direct intervention of the human body. The tort of trespass to person essentially contains the following ingredients:

a) Defendant's State Of Mind – In the case of battery what is crucial, then is to define what is meant by 'intentional act'. In this context there are two broad possibilities; One that the Defendant intended only to act in the way that he did and secondly the Defendant both intended to act in the way that he did and the resulting contact with the claimant. In most cases there is a distinction here of little consequence. If the Defendant aims a punch at the Claimant and succeeds in striking the latter there is nothing to separate the Claimants act from the outcome of the act. But in some circumstances the Defendant may do a thing without intending a particular outcome. If the Defendant aims his rifle at the claimant, then pulls the trigger, there is no doubt that he intended to shoot the claimant. But if the Defendant aims his rifle at a partridge on a hunting trip but accidentally shoots the Claimant, it is clear that the Defendant intended the act

and not necessarily the outcome. In such circumstances it would be probably stretching a tort too far to hold the Defendant liable. And in the case of False Imprisonment the tort should be intentional in the sense that the defendant must intend to do an act which is least substantially certain to affect the confinement. There is no need to show malice. Indeed, even there is good faith on the part of the defendant, he may still be liable for the intentional confinement of the claimant. Thus, in *R V. Governor Of Brockhill prison, ex P Evans (no 2)* . A prison governor who calculated the claimants day of release in accordance with the law as understood at the time of her conviction was held liable when a subsequent change in the law meant that the prisoner should have been released 59 days earlier.

b) No Consent - This ingredient is not only applicable to false imprisonment but also to battery. The absence of consent is so inherent in the notion of a tortious invasion of interests in the person that the absence of consent must be established by the claimant. This might at first seem rather odd but any lingering doubt that the onus of proving absence of consent lies on the claimant was laid to rest in *Freeman V. Home Office*[21]. A prisoner alleged that he had been injected with powerful mood changing drugs against his will. The judge held that since the essence of battery is a specific and un-permitted intrusion on the claimant's body it is for the claimant to establish that the intrusion was un-permitted. This he Failed to do. Part of the rationale for this approach is that a contrary result would potentially have posed severe problems for all doctors not just prison medical officers. Any contact with a patient example vaccination or even examining sore throats with a spatula would prima facie constitute battery. To escape liability the doctor would have to prove consent which would be extremely difficult in cases involving minor procedures where no written consent has been obtained.

c) Character of the Defendant's conduct – Assault and battery are similar for the fact that there I use of force but the difference in the two is that in the former that there is an apprehension of contact not necessarily the contact itself, that

must be established. When there is battery assault will also exist however not vice versa. There are, however, exceptions; for instance, when one is attacked from behind. In most cases assault is a subset of battery. In other words, if the defendant intends to commit battery, and the plaintiff apprehends it, it is an assault. In the case of false imprisonment, it has been seen that defendant's conduct plays a role in the fact that there was an intention in the detaining of the person without a reasonable and moreover a lawful reason. An act of the defendant which directly and intentionally (possibly negligently) causes the confinement of the claimant within an area delimited by the defendant.

The act of assault is different from the act of battery, though the act of assault is almost a subset of Battery. Assault is the apprehension of the physical interference whereas battery is the commission of such act.

General Defenses to Trespass

The law of trespass is essentially segregated into two halves i.e. the tort for criminal trespass which essentially forms assault and battery and trespass to property. Each half has its own set of defenses in general. Though a couple of defenses are the same but yet are different. The tort of trespass can be given a lax in the case of the defenses that have been prescribed.

The Defenses to trespass are

a) Justification – Certain times there is a lawful justification to the encroachment of a person or his land. This justification is backed by a lawful reason which has either been given by statute or by judicial precedent. For example in the case of trespass to land Police officers are permitted to enter land to make an arrest. And if in the case of Criminal trespass, a police officer is entitled to cause bodily injury in good faith, in the course of his duties. If a suspect to a crime is pointing a gun at the officer the officer is entitled to use force to apprehend the suspect. There are many forms of justification. There even could be the presence of a license to

enter the land of claimant which has been obtained under the law. In such cases the encroachment is valid. The two general principles in the case of justification are a) A justified legal authority encroaching upon a person's land or using force against a person for lawful reason. B) A distinction between an absolute right to do an act and the mere power to do an act. When it is the former it is justified but when it is the latter it is not justified. Entry under a legal process is justifiable.

Another essential provision of the tort of trespass includes in the directness of the act. If the act is direct i.e. arising out of the natural consequences of the act of the defendant then it is valid. If the consequences of the act are a result of a remote effect of an act then it is not held to be a valid suit. So, if the defendant erects up a tree which leads to growing of branches and boughs and roots onto the land of the claimant then it is not held to be trespass but nuisance. There is a thin line between nuisance and trespass. Trespass is encroachment upon property whereas nuisance is interference upon another's right to enjoy his property. This is the test to be applied to segregate the tort of trespass from the tort of nuisance. But it is worthy of being noted that directly causing an object to enter onto another's land does amount to trespass. Therefore if a person's hounds enter the other's land and there was requisite intention of making the hounds enter or there was negligence in taking care of the hounds so as to enable them to enter onto another's land it forms the tort of trespass. Here it should be seen that it is a direct act as either the encouragement or the negligent act of not taking due care of the hounds to enter onto the plaintiff's land lead to the consequence of trespass. Henceforth it can be ruled out that there was any intervening act.

Exercise:

1. In public nuisance, a private right of action lies
 - a) When the injury is merely consequential
 - b) When there is proof of damage
 - c) When the injury is particular, direct and substantial
 - d) None of the above

2. In nuisance, a defendant is liable to 'unusually sensitive plaintiff'
 - a) Only in personal injury cases
 - b) Only in property injury cases
 - c) Both personal injury cases and property injury cases
 - d) None of the above
3. One of the remedies for false imprisonment
 - a. Writ of Mandamus
 - b. Writ of Habeas Corpus
 - c. Writ of Quo Warranto
 - d. Writ of Certiorari
4. The main supporter of the theory that it is a "law of Tort" and not "law of Torts" is
 - a) Winfield
 - b) Salmond
 - c) Fleming
 - d) Fraser
5. The absolute liability theory as the basis for liability in tort for industrial injuries was propounded by
 - a) Blackburn J.
 - b) V.R. Krishna Iyer J.
 - c) P.N. Bhagwat J.
 - d) Lord Atkin