

# TRESPASS

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**LAW OF TORTS**

LEGAL PAATH COACHING

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## 1. What is Trespass?

The word **Trespass** comes from an old French word "*trespasser*", which means "to go beyond a limit" or "to cross over". In simple terms, when someone goes where they are **NOT** allowed to go, or touches something that is **NOT** theirs, or physically interferes with another person's body that is called Trespass.

Trespass is part of the **Law of Torts**. A tort is a civil wrong meaning it is not a crime, but it is still wrong in the eyes of law, and the person who commits it can be made to pay compensation. What makes trespass special is that you do **not need to prove that you were harmed**. Just the fact that someone interfered even for a second is enough to go to court.

■ **Key Point:** If someone enters your land, touches your things, or physically interferes with your body without your permission that is Trespass. No proof of damage is needed.

Trespass protects **three things**: your land, your goods (movable things), and your body/personal liberty. Accordingly, there are three types of trespass:

- Trespass to Land
- Trespass to Goods
- Trespass to Person

## 2. Definitions by Legal Thinkers

Many great legal thinkers have defined trespass. Below are three of the most important definitions.

### Winfield Law of Tort (1937)

*"Trespass is the direct interference with the possession of land or goods."*

**Explanation:** Winfield highlights two things: (1) the interference must be **direct** the act itself must cause the harm; and (2) the law protects **possession** not merely ownership. Even a tenant can file a case of trespass. Winfield's definition covers land and goods only.

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**Salmond Law of Torts (12th Edition)**

*"Trespass is a civil wrong consisting of direct, forcible injury to the person, land, or chattels of another."*

**Explanation:** Salmond covers all three person, land, and chattels (goods). The word 'forcible' does NOT mean violence here it simply means a positive, direct act. Salmond's definition is wider than Winfield's because it includes the body (person) as well.

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**Pollock Law of Torts (15th Edition)**

*"Every direct injury to person or property, not justified by law or the consent of the party injured, is a trespass."*

**Explanation:** Pollock adds two important qualifications the act must NOT be justified by law, and must NOT be done with consent. Pollock's definition already includes the defences within the definition itself.

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### 3. The Three Core Ideas of Trespass

Every type of trespass rests on three very important ideas: (1) Direct Interference, (2) Actionable Per Se, and (3) Intentional Act.

#### 3.1 Direct Interference

The word "**direct**" means that the defendant's own act must cause the harm with no intervening steps, no chain of events, and no third party causing the problem.

For example, if you throw a stone and it hits someone that is direct interference (trespass). But if you light a fire on your land and smoke drifts into your neighbour's house that is indirect interference (nuisance, not trespass).

##### ► Scott v Shepherd (1773) The Squib Case

**Facts:** A person threw a lit firework (squib) into a busy market. To protect themselves, people kept throwing it further. It ultimately hit the plaintiff and exploded, blinding him in one eye.

**Held:** Trespass to person. The original throw was the direct act everything that followed was part of the same chain of causation started by that one act.

■ **Rule:** *The person who initiates a direct harmful act is liable for trespass, even if others also handled the object in between.*

#### Trespass vs Nuisance Comparison

Point	Trespass	Nuisance
Type of interference	Direct the act itself causes harm	Indirect harm comes through a chain
Proof of damage needed?	No actionable per se	Yes damage must be proved
Simple example	Throwing a stone at someone's window	Factory smoke damaging neighbour's garden

### 3.2 Actionable Per Se (No Damage Needed)

"**Actionable per se**" is a Latin phrase meaning "*it can be taken to court by itself.*" You do not need to show any damage or loss. The moment trespass occurs, you have the right to approach the court even if nothing was broken, stolen, or harmed.

Courts may award **nominal damages** (a small symbolic amount) to acknowledge the violation, or larger punitive damages in serious cases.

#### ► Entick v Carrington (1765) The Famous Warrant Case

**Facts:** Government officers broke into Entick's house and took his papers without a proper legal warrant to do so. Nothing in the house was physically damaged.

**Held:** Trespass to land. The officers had no authority. The entry alone was sufficient no damage needed to be proved.

■ **Rule:** *Entering someone's property without permission is trespass, even if nothing is damaged. This is the practical meaning of 'actionable per se'.*

#### ► Ashby v White (1703) Right Violated, No Physical Loss

**Facts:** A returning officer wrongly prevented Ashby from voting in an election. Ashby suffered no financial loss his vote was simply refused.

**Held:** A legal right was violated. Even without actual damage, an action could be brought.

■ **Rule:** *"Where there is a right, there must be a remedy" Ubi Jus Ibi Remedium. Trespass is actionable per se because any violation of a legal right deserves a remedy.*

### 3.3 Intentional Act

An "**intentional act**" in trespass does NOT mean that the defendant intended to do something wrong. It only means that the defendant **voluntarily performed the act** not that they intended to trespass. Mistake is **NOT** a defence in trespass.

#### ► Basely v Clarkson (1681) Mistake is Not a Defence

**Facts:** The defendant was mowing grass on his own land. He accidentally crossed the boundary and mowed some grass on his neighbour's land as well. He genuinely believed it was his own land.

**Held:** He was still liable for trespass. He voluntarily swung his scythe the fact that he made a mistake about the boundary was irrelevant.

■ **Rule:** *In trespass, what matters is whether the act was voluntary not whether the person intended to trespass. Mistake, good faith, or honest belief are NOT valid defences.*

## 4. Trespass to Land Full Explanation

### 4.1 Simple Meaning

Trespass to land means entering someone else's land without permission, or doing something on your own side that directly interferes with their land without any lawful justification. The key word here is **possession**, not ownership. Even a tenant who rents a house can sue for trespass.

In law, "**land**" means much more than just the soil. It includes:

- The surface soil, fields, roads within the property
- Any buildings on the land houses, walls, sheds
- The airspace above the land up to a reasonable height
- The subsoil below the surface underground

*Cujus est solum, ejus est usque ad coelum et ad inferos* "Whoever owns the land owns everything up to the sky and down to the centre of the earth."

However, this maxim is now **limited**. Courts have held that airspace protection extends only up to the height reasonably needed for normal use of the land. Aircraft flying at high altitude do not commit trespass.

### 4.2 Essentials (What Must Be Proved)

- **Unauthorised Entry:** The entry must be without the permission of the person in possession. Even 1 centimetre of encroachment is sufficient for trespass.
- **Possession of Land:** The plaintiff must be in possession at the time of the trespass actual or constructive possession.
- **Direct Interference:** The defendant's own act must be the cause. A chain of indirect events does not constitute trespass.
- **Voluntary Act:** The entry must be the defendant's own deliberate choice. Being blown onto land by a storm or pushed by another is not trespass.

### 4.3 Case Laws for Trespass to Land

#### ► **Kelsen v Imperial Tobacco Co (1957) Even 8 Inches is Trespass**

**Facts:** The defendant company erected an advertising sign on their own building. The sign projected 8 inches (about 20 cm) into the airspace above the plaintiff's adjoining shop.

**Held:** Even this small projection into the airspace above the plaintiff's land was trespass. The court ordered the sign to be removed.

■ **Rule:** *There is no minimum size for trespass. Any physical intrusion even a few inches into someone's land or the airspace directly above it constitutes trespass.*

#### ► **Bulli Coal Mining Co v Osborne (1899) Underground is Also Your Land**

**Facts:** The defendant mining company dug tunnels under the plaintiff's land from their own adjacent mine and extracted coal. The coal was not of great monetary value.

**Held:** Trespass. Even though the coal was not very valuable, the defendant had no right to go under the plaintiff's land. The plaintiff was awarded the full value of the coal.

■ **Rule:** *Land includes the subsoil below the surface. Digging or mining under someone's land without permission is trespass to land.*

#### ► **Bernstein v Skyviews & General Ltd (1978) High Airspace is Free**

**Facts:** A company flew a plane at high altitude above Lord Bernstein's large estate and photographed it. Bernstein claimed they had trespassed his airspace.

**Held:** No trespass. The right to airspace extends only to the height reasonably needed to use and enjoy the land. Beyond that height, the air is free for all.

■ **Rule:** *Airspace protection is limited to a reasonable height. Flying high above someone's land is NOT trespass. This balances property rights with the needs of aviation.*

## 5. Trespass to Goods Full Explanation

### 5.1 Simple Meaning

Trespass to goods means directly and voluntarily **interfering with movable things** (goods) that belong to or are in the possession of another person without permission. The focus is on **possession**, not ownership.

Even if you do not damage the goods just moving them, touching them, or using them without permission can amount to trespass to goods.

## 5.2 Essentials (What Must Be Proved)

- **Direct Interference:** The defendant must directly interfere with the goods by moving them, damaging them, taking them, or even just touching them without authority.
- **Possession with the Plaintiff:** The person suing must be in possession of the goods at the time. Even a finder of lost goods has rights against everyone except the true owner.
- **Voluntary Act:** The act must be a deliberate choice not an accident or the result of force by someone else.
- **No Damage Needed:** Like all forms of trespass, trespass to goods is also **actionable per se**. No proof of damage or financial loss is required.

## 5.3 Case Laws for Trespass to Goods

### ► **Armory v Delamirie (1722) Finder Has Rights Too**

**Facts:** A young chimney sweep's boy found a jewel on the street. He took it to a jeweller's shop to have it valued. The jeweller's assistant removed the gemstones under the pretext of weighing them and then refused to return them.

**Held:** The boy won the case. Even though he was not the original owner, he had possession and that possession gave him rights against everyone except the true owner.

■ **Rule:** *Possession is itself a right in law. Even a finder not the original owner can file a case of trespass against anyone who takes or interferes with the found object.*

### ► **Kirk v Gregory (1876) Good Intention is Not a Defence**

**Facts:** A man died. His sister-in-law, intending to keep his jewellery safe, moved it from one room to another in the house. The jewellery was subsequently stolen from that second room.

**Held:** She was liable for trespass to goods. She had no right to move the jewellery, which was not in her possession. Even though she meant well, good intention is not a defence.

■ **Rule:** *Good intention does NOT excuse trespass to goods. Moving or handling someone else's goods without authority even to help can result in liability for trespass and for any consequential loss.*

### ► Fouldes v Willoughby (1841) Trespass vs Conversion

**Facts:** A ferryman wrongly refused to carry the plaintiff's horses on his ferry and removed them from the boat. He did not keep the horses for himself he merely put them ashore.

**Held:** This was trespass to goods (removing the horses), but NOT conversion because the ferryman did not claim any ownership over the horses. He simply moved them.

■ **Rule:** *Moving or interfering with goods temporarily (without claiming ownership) = Trespass. Treating goods as your own permanently = Conversion. These are two distinct civil wrongs.*

## 6. Trespass to Person Full Explanation

### 6.1 Simple Meaning

Trespass to person means any direct and intentional interference with a **person's body or personal liberty** without their consent. This is the most serious type of trespass because it affects human beings their bodies and their freedom.

There are **three types** of trespass to person:

- **Assault**
- **Battery**
- **False Imprisonment**

### 6.2 Assault

Assault means an act by the defendant that makes the plaintiff **reasonably apprehend** that they are about to be physically touched or harmed. There is **no actual touching** in assault it is only the fear or apprehension of being touched.

**Definition (Winfield & Jolowicz):** *"An assault is an act of the defendant which causes the plaintiff to reasonably apprehend the infliction of a battery upon him."*

### ► Stephens v Myers (1830) Assault Without Actually Reaching

**Facts:** At a public meeting, the defendant (Myers) became angry and walked towards the plaintiff in a threatening manner. Some people sitting between them stopped him before he could reach.

**Held:** This was assault. Although Myers never reached the plaintiff, his threatening advance created a genuine and reasonable fear of imminent physical contact.

■ **Rule:** *Assault occurs the moment the plaintiff reasonably fears imminent physical contact even if actual contact never takes place.*

### 6.3 Battery

Battery is the **actual physical touching** of another person without their consent. Unlike assault (which is only about fear), battery requires real contact with the body. The force does NOT need to be violent or painful even the lightest touch, if done without permission, is battery in law.

**Definition (Salmond & Heuston):** *"Battery is the intentional and direct application of force to another person."*

#### ► Collins v Wilcock (1984) Police Officer Commits Battery

**Facts:** A police officer grabbed a woman's arm to prevent her from walking away. The officer had no legal authority to arrest her at that point. The woman scratched the officer's arm to free herself.

**Held:** The officer committed battery by grabbing the woman's arm without legal authority. The woman's act of scratching was lawful self-defence.

■ **Rule:** *Any physical contact even by a police officer that exceeds what is normal and acceptable in everyday life, and is carried out without lawful authority, is battery.*

#### ► Fagan v Metropolitan Police Commissioner (1969) Battery Can Be Continuing

**Facts:** Fagan accidentally drove his car onto a policeman's foot. When the officer informed him of this, Fagan chose not to move the car immediately and left it there for a while.

**Held:** Battery. The initial driving was accidental so there was no battery at that moment. But when Fagan deliberately chose not to remove the car after knowing it was on the officer's foot, that became an intentional act and therefore battery.

■ **Rule:** *Battery can arise from a continuing act. If you know your act is causing harm and you deliberately choose to continue it that is battery, even if it began accidentally.*

### 6.4 False Imprisonment

False Imprisonment means **unlawfully restricting a person from moving freely** without any legal justification. It does not require an actual prison. The restraint must be **total**. If there is a reasonable and known way out, it is NOT false imprisonment.

**Definition (Winfield):** *"False imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law."*

► **Bird v Jones (1845) Partial Block is NOT False Imprisonment**

**Facts:** The defendant blocked part of a public bridge. The plaintiff was not allowed to cross through that portion. However, he could turn around and take another route.

**Held:** Not false imprisonment. The plaintiff's movement was only partially restricted. He could still go back and use an alternative path. Total restraint is required.

■ **Rule:** *False imprisonment requires TOTAL restraint of movement. If there is a reasonable alternative way out that the person knows about, there is no false imprisonment.*

► **Meering v Grahame-White Aviation Co (1919) Even Unaware Imprisonment Counts**

**Facts:** Meering was taken to a room by his employers during an investigation into a theft. Guards were placed outside. Meering was not told he was being detained he did not know he was being kept there.

**Held:** He was still falsely imprisoned. The guards outside physically prevented him from leaving, even though Meering was unaware of this at the time.

■ **Rule:** *False imprisonment can occur even if the person does not know they are being detained. The imprisonment begins from the moment of restraint not from when the person discovers it.*

## 7. Defences to Trespass

Trespass is a strong tort, but the law provides certain defences reasons that, if proved, can protect the defendant from liability.

- **1. Consent:** If the plaintiff gave permission verbally, in writing, or by their conduct there is no trespass. A patient who signs a consent form before surgery cannot later sue the doctor for battery. Consent must be genuine and freely given consent obtained by fraud or force is invalid.
- **2. Necessity:** Sometimes a person must enter land or interfere with goods or a person to prevent a greater harm. For example, firefighters entering a neighbour's land to stop a fire from spreading. The danger must be real and the action must be proportionate.
- **3. Lawful Authority:** Police officers, court officials, and other authorised persons can enter land or detain a person if the law grants them that power. A police officer acting under a valid search warrant is not a trespasser. However, if they act beyond the scope of the warrant, they become a *trespasser ab initio*.
- **4. Inevitable Accident:** If the act was entirely beyond the defendant's control something they could not have prevented even with full care it is an inevitable accident

and there is no trespass. For example, a strong storm blowing a tree from your land onto your neighbour's property.

- **5. Self-Defence:** A person may use reasonable force to protect themselves, their family, or their property from an unlawful attack. The force used must be proportionate to the threat excessive force will itself constitute trespass.

## 8. Trespass vs Conversion Simple Difference

Both trespass to goods and conversion deal with interference with another's movable property. However, they differ in the seriousness of the interference.

Point	Trespass to Goods	Conversion
How serious?	Minor or temporary interference	Serious or permanent interference
Does defendant claim ownership?	No merely interferes with goods	Yes treats goods as their own
Simple example	Using someone's bike for 1 hour without permission	Selling or destroying someone's bike
Remedy (what court gives)	Damages may be nominal	Full value of the goods

## 9. Final Summary Everything in Short

### Trespass The Three Pillars Revisited

- **1. Direct Interference:** The defendant's own act must directly cause the interference. There can be no intervening chain of events. This is what separates trespass from nuisance and negligence.
- **2. Actionable Per Se:** You do NOT need to prove any damage. The mere violation of your right to your land, your goods, or your body is enough to go to court. Courts can award nominal (symbolic) damages even when no actual loss is proved.
- **3. Intentional Act:** The defendant must have voluntarily performed the act. They need not have intended to trespass only intended to carry out the act. Mistake, good faith, and good intention are NOT defences.

■ **Key Point:** Trespass protects three fundamental things your land, your goods, and your body and freedom. Whether someone steps on your field without permission, moves your belongings without asking, or physically touches you or unlawfully detains you the law of trespass gives you a remedy. You do not need to wait until you are harmed. The moment the right is violated you have a case.

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