

Vidhigya Challenger Series
Daily Practice Sheet 13
Legal Reasoning

The tort of trespass to person has developed as it is today is a result of many changes and modifications. Interference, however slight with a person's elementary civil right to security of person, and self-determination in relation to his own body, constitutes trespass to person. Trespass may be done intentionally, deliberately or negligently. The fundamental principle plain and incontestable law is that every person's body is inviolate. Thus, it can be summarized that any unreasonable interference with a person without any lawful justification amounts to trespass to person.

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Trespass to person may be categorised as:

1. Assault, which is "any act of such a nature as to excite an apprehension of battery";
2. Battery, " intentional and unpermitted contact with the plaintiff's person or anything attached to it and practically identified with it";and
3. False imprisonment, the "unlawful obstruction or deprivation of freedom from restraint of movement

The basic idea behind trespass to person is that every person's body is inviolate. Under the old law, whenever injury was caused to another by a person by direct and immediate application of force, the plaintiff could sue the defendant in trespass to person, without alleging negligence, whereas if the injury was only consequential he had to sue in case. A person in order to establish a suit for trespass to person need to proof just one thing whether there was an intention to commit the trespass or not. An act does not constitute trespass to person unless it is done with intention. Thus intention is the chief criteria for trespass to person. If there is an intention behind committing a trespass then it is actionable per se and the plaintiff need not proof any specific or particular damage. In negligent commission of trespass to person, plaintiff need to proof that injuries so complaint of are reasonably foreseeable. In case of direct trespass or intentional trespass proof of actual damage is not necessary but in negligent torts, proof of damage becomes essential.

Defences against trespass to body

Contributory negligence: In law, behaviour that contributes to one's own injury or loss and fails to meet the standard of prudence that one should observe for one's own good

Necessity could also amount to defence to a claim for false imprisonment. The test for deciding whether measures falling short of arrest could lawfully be taken against individuals was whether there was a reasonable suspicion that individual was presenting a particular threats. The burden of proof was on the claimant to show that the exercise of discretion to detain was unreasonable.

Statutory authority: Authorities compelled by the law to carry out search and seizures and cases where consent is taken to conduct a bodily search would not be construed as a trespass on the body of a person.

Self-defence: A person, to protect himself from an unruly element or any other such person or incidents, can trespass on the property to preclude the act from consummation.

Source: Extracted (with edits and revisions) An excerpt from article titled " Concept of Trespass to Person ", published at 'LegalServicesIndia'.

1. Vidhi and Vidhan were playing football in a public park. During the second quarter of their game, Vidhan hit the ball and the ball hit an old man sitting on a bench in the park. The old man incurred great injury on the account of the ball hitting him. Decide weather Vidhan can be accused of the offence of tresspass against the old man?Decide.

- (a) Yes as Vidhan caused injury to the old man.
- (b) No as Vidhan was busy playing the game and did not notice the old man.
- (c) Yes as Vidhan was aware that the old man was sitting on the bench.
- (d) No as Vidhan did not have the intention to hit the old man deliberately

2. Which of following statements can be inferred about trespass to a person from the given passage?Decide.

STATEMENT 1: No person acting in good faith can be liable for trespass to a person.

STATEMENT 2:Trespass includes apprehension of unreasonable interference with one's person and body.

- a) 1 only
- b) 2 only
- c) Both 1 and 2
- d) Neither 1 not 2

3. Vidhan was standing next to the bus stand. Vidhi saw a bus approaching at Vidhan at a great speed and pushed Vidhan in the opposite direction. However, Vidhan hit a pole in his head and died. State whether Vidhi is liable for trespass to Vidhan?Decide.

- a) No as Vidhi acted out necessity.
- b) Yes as Vidhi did not act consciously.
- c) Yes as Vidhi pushed Vidhan intentionally.
- d) No as Vidhi was not driving the bus.

4. Vidhi and Vidhan are neighbors but are always fighting for one thing or the other. One day during their fight, Vidhi threw cold water at Vidhan. Can Vidhan accuse Vidhi of trespass?Decide.

- a) Vidhi acted intentionally therefore, can be liable for trespass.
- b) Vidhi did not cause any visible damage to Vidhan, therefore is not liable.
- c) Vidhi acted out petty fight therefore, is not liable.
- d) Vidhan was also fighting with Vidhi, therefore, Vidhi alone cannot be held liable.

5. With respect to the defence to the tort of trespass, consider the following statements and state which of them are true?Decide.

- a) The plaintiff must not have acted in a negligent way to contribute to the events leading to trespass.
- b) Self-defence: A person, to protect himself from an unruly element or any other such person or incidents, can trespass on the property to preclude the act from consummation.]
- c) When there is a negligence of plaintiff included in the act, then defendant's liability can be mitigated to the extent and compromise can be arrived at or liability can be divided.
- d) All of the above.

Answers & Explanations

1. Ans-(d)

Sol. option (d) is correct because to constitute an offence of trespass to a person, it is important to hold the intention to trespass. Therefore, option (a) and (c) are incorrect. Option (b) is incorrect as statement does not comply with facts given in the passage.

2. Ans- (c)

Sol. option (c) is correct. Trespass to Person (Assault) is the causing of apprehension of unreasonable interference with one's person and body as well as third person and includes usage of force causing damage and impairment in the body. The trespasser, with an ulterior intention, transgresses the right of another and makes an alteration in it with the objective to cause wrongful loss or wrongful gain as the case may be.

3. Ans- (a)

Sol. option (a) is correct because though Vidhi was well aware of the situation and pushed Vidhan intentionally, she was acting out of necessity and Necessity is a defence for the tort of trespass. Option (d) can be rejected as the reason given is insufficient for the answer.

4. Ans-(a)

Sol. option (a) is correct because intention is the chief criteria for trespass to person. If there is an intention behind committing a trespass then it is actionable per se and the plaintiff need not prove any specific or particular damage. Option (d) is incorrect as no trespass was done on the account of Vidhan.

5. Ans-(d)

Sol. Option (d) is the answer, as all the statements can be inferred from the passage.