

TRESPASS TO LAND

Direct interference with another person's land without consent (*Plenty v Dillon*)

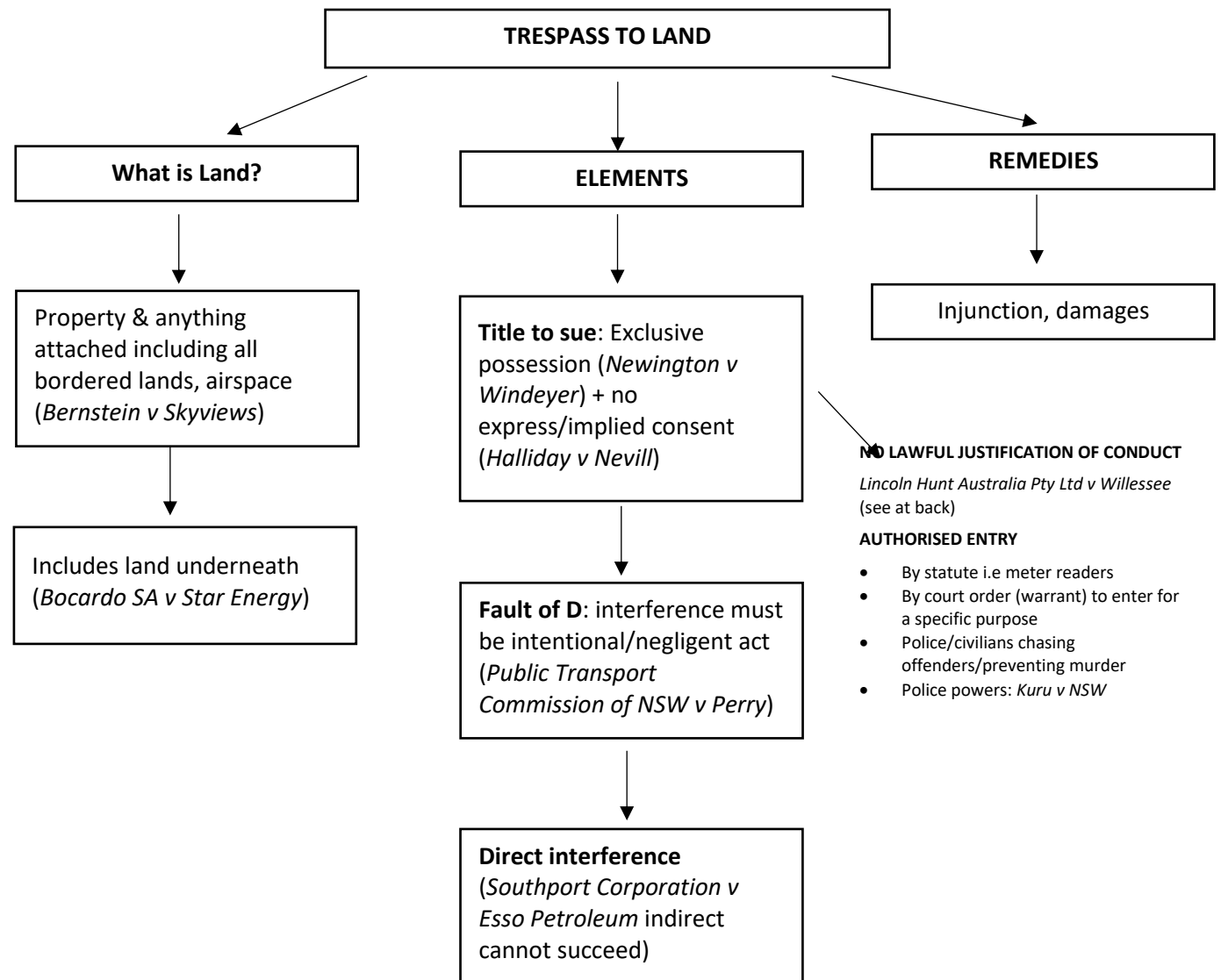
1. TITLE TO SUE

- **Exclusive possession:** the right to hold the land to the exclusion of others. Relational right – P only needs to have superior right
 - *Newington v Windeyer* garden, who used it longer?
 - TENANTS & LESSORS – contractual right
 - Tenant can sue lessors (if trespass outside rights to entry), can't sue if tenant breaches lease – L has imm. right to poss.
 - Lessor may x sue even if property damaged *Stereff v Rycen & Anor*
 - Lessor x give licenses to others to trespass tenant land *Kelsen v Imperial Tobacco Co*
 - LICENSEES: permission to remain on land for a particular purpose, x exclusive right = no title to sue
 - CO-OWNERS
 - Each has exclusive possession
 - Co-owner can sue other if wrongfully excluded
 - Occupying co-owner > rights than rest: they can grant entry *Baker v Police*
 - EASEMENTS & PROFITS a PRENDRE
 - ^ person w/right entitled to sue
 - = limited right of profit in participation in the profit of another's land i.e right to take timber.
 - P gave consent = can't sue
 - **Express license:** enter for a *purpose*, once complete, leave. (*Barker v R* entered w/purpose of theft rather security house)
 - **Implied license:** *bona fide* entrants – enter prop. for legit reas (*Halliday v Nevill* enter into prop for lawful communication allowed)
 - Authority of law: officers have right of non-consensual entry to carry out functions i.e save a life.
- #### 2. DIRECT INTERFERENCE WITH LAND
- **Direct:** interference is immediate upon D's act i.e entering w/out permission or refusing to leave when permission withdrawn.
 - (*Southport Corporation v Esso Petroleum* – oil drift pollute - beach, indirect = action in t to land fail)
 - **Interference:** area below surface & airspace above.
 - Subsoil: *Bocardo SA v Star Energy UK Onshore* cables natural gas
 - Airspace: max height necc for ordinary use/enjoyment of land+structures on it *Bernstein v Skyviews & General Ltd* pic of house
 - Includes if smth interferes w/'actual & potential ordinary use' of the land in the future *LIP Investments v Howard Chia Investments* scaffolding
 - If **FAULT OF D**
 - Intentional or negligent act
 - Involuntary = not trespass *Public Transport Commission of NSW v Perry*

REMEDIES

- **Self-help:** use of reasonable force to remove trespass/prevent entry
- **Nominal:** no actual damage + interference proven.
- **Compensatory:** damage – place P in pos as if tres. didn't happen
 - x include changes in market value
 - damages for restoration depends if reasonable i.e disprop.

- **Exemplary & aggravated damages:** same as T to person.
- **Injunction:** restrain any actual/threated/apprehended T to land. (*Bendal Pty Ltd v Mirvac Project Pty Ltd*)
 - P has onus of proving damages are inadequate.
 - No injunction if T is past & completed (*Sherman v Condon*)
- **Mesne profits:** if tresp. consists D temp. occupying land. i.e rental value from time of wrongful possession to ejection of D.
- **Limitation period:** 6 years (NT 3 years)



NEGLIGENCE

The tort of negligence allows a plaintiff to recover compensation for a loss or injury caused by the defendant's failure to take reasonable care. It is concerned with what a 'reasonable person' in the D's position ought to have known or done (*Tame v NSW*). For a successful negligence action, the three essential elements must be satisfied; existence of a duty of care, breach of that duty and damage to the P.

COMPENSABLE HARM

- Damage is the gist of the action, actual loss must have occurred
- Economic Loss*
- Consequential – loss sustained as a consequence of negligently inflicted personal injury or property damage.
 - Pure – loss unaccompanied by personal injury or property damage.

Personal Injury

- Physical
- Mental CLA s 5Q
 - Consequential – mental harm suffered as a consequence of any personal injury of any kind.
 - Pure – not consequence of phys personal injury. i.e saw smth

Property Damage

Unrecognised

- (Pure) grief, distress, sorrow, disappointment, stress, fear etc.
- 'fact of life'

<i>Harriton v Stephens</i>	
Facts: Doctor failed to advise properly about rubella, mother was exposed to rubella, child (P) born w/severe congenital disabilities, mother would have terminated pregnancy. Issue of whether doctor owed child a duty of care to her partic.dmg.	Held: no duty of care because: <ol style="list-style-type: none"> 1. Dmg no 'recognised' Callinan J: a non-being can say nothing at all 2. The duty would affect other duties

Good Samaritans

CLA Part 1D

5AD - Recklessness = more than negligence, where you know there is a risk, but you do it anyways.

5AE – no protect for intoxication w/drugs or alcohol.

Road Authorities

CLA s 5Z

Not liable unless the authority had **ACTUAL KNOWLEDGE** of the risk resulting in harm.

Public Authorities

Public authorities have scarce resources stretched over responsibilities.

CLA s 5W – principles of duty of care owed

CLA s 5Y – protection from liability

DUTY OF CARE

Scope of Duty:

- Nature of harm + how it arose
- Relationship b/w parties
- Whether scope defined b/w parties

Consider OLA s 5

What if not recog. Category?

Novel/complex situations (not recognised category/psychiatric)

Donoghue v Stevenson:

Reasonable foreseeability ('neighbour' principle)

Multifactor approach:

Reasonable foreseeability (objective test) & multiple salient factors within each individual case (*Sullivan v Moody*)

Established Duty of Care Categories (prima facie)

Salient factors:

- Nature of relationship
- D's actual foresight of risk
- Vulnerability of P
- Reliance of P on D
- Coherency of law... etc (*Sullivan v Moody*)

NO DUTY SITUATIONS

After duty of care **established**, determine whether there is an:

inherent risk

CLA s 5P – not obvious = warn!

obvious risk

s 5F – define

s 5O – no duty to warn

s 5O(2) – exceptions to obv.

obvious risk pertaining to a dang.rec.act

s 5E – define dang.rec.act.

s 5I – no liab where risk warning

s 5J – contractual duty for rec.

exclusion clause in contract

S 5J

COMMON DIRECTIVE WORDS IN ESSAY QUESTIONS

Account for

Give the reasons for something and why. Not to be confused with 'give an account of', which is purely descriptive.

Analyse

Break an issue into its constituent parts. Examine each part in detail using supporting arguments and evidence for and against as well as how these interrelate to one another.

Argue

Present the case for and/or against a particular proposition.

Assess

Weigh up to what extent something is true. Persuade the reader of your argument by citing relevant research but also remember to point out any flaws and counter-arguments as well. Conclude by stating clearly how far you are in agreement with the original proposition.

Clarify

Literally make something clearer and, where appropriate, simplify it. This could involve, for example, explaining in simpler terms a complex process or theory, or the relationship between two variables.

Comment

Pick out the main points on a subject and give your opinion, reinforcing your point of view using logic and reference to relevant evidence, including any wider reading you have done.

Compare

Identify the similarities and differences between two or more phenomena. Say if any of the shared similarities or differences are more important than others. 'Compare' and 'contrast' will often feature together in an essay question.

Consider

Say what you think and have observed about something. Back up your comments using appropriate evidence from external sources, or your own experience. Include any views which are contrary to your own and how they relate to what you originally thought.

Contrast

Similar to compare but concentrate on the dissimilarities between two or more phenomena, or what sets them apart. Point out any differences which are particularly significant.

Critically evaluate

Give your verdict as to what extent a statement or findings within a piece of research are true, or to what extent you agree with them. Provide evidence taken from a wide range of sources which both agree with and contradict an argument. Come to a final conclusion, basing your decision on what you judge to be the most important factors and justify how you have made your choice

Criticise/Critique

Give your judgment about the merits of theories or opinions, about the truth of the facts and back up your judgement by a discussion of the evidence.

Define

To give in precise terms the meaning of something. Bring to attention any problems posed with the definition and different interpretations that may exist.

Demonstrate

Show how, with examples to illustrate.

Describe

Provide a detailed explanation as to how and why something happens.

Diagram

For a question specifies a diagram (not usual in Law but possible), you should present a drawing, chart, plan or graphic representation in your answer. You should include a brief textual description or explanation of the diagram in the main text.

Differentiate

Similar to contrast. Concentrate on the characteristics that are dissimilar but acknowledge those that are similar.

Discuss

Essentially this is a written debate where you are using your skill at reasoning, backed up by carefully selected evidence to make a case for and against an argument, or point out the advantages and disadvantages of a given context. Remember to arrive at a conclusion.

Elaborate

To give in more detail, provide more information on.

Enumerate

List or specify and describe.

Evaluate

See 'critically evaluate'.

Examine

Look in close detail and establish the key facts and important issues surrounding a topic. This should be a critical evaluation and you should try and offer reasons as to why the facts and issues you have identified are the most important, as well as explain the different ways they could be construed.

Explain

Clarify a topic by giving a detailed account as to how and why it occurs, or what is meant by the use of this term in a particular context. Your writing should have clarity so that complex procedures or sequences of events can be understood, defining key terms where appropriate, and be substantiated with relevant research.

Explore

Adopt a questioning approach and consider a variety of different viewpoints. Where possible reconcile opposing views by presenting a final line of argument.

Identify

Determine what are the key points to be addressed and implications thereof.

Illustrate

A similar instruction to 'explain' whereby you are asked to show the workings of something, making use of definite examples and statistics if appropriate to add weight to your explanation.

Interpret

Demonstrate your understanding of an issue or topic. This can be the use of particular terminology by an author, or what the findings from a piece of research suggest to you. In the latter instance, comment on any significant patterns and causal relationships.

Justify

Make a case by providing a body of evidence to support your ideas and points of view. In order to present a balanced argument, consider opinions which may run contrary to your own before stating your conclusion.

List

Similar to enumerate but is suggestive of brevity rather than comprehensiveness.

Narrate

Tell the story or give an account of an event or an experience.

Outline

Convey the main points placing emphasis on global structures and interrelationships rather than minute detail.

Prove

Demonstrate truth or falsity of something by reasoned argument, backed up by evidence.

Relate

Narrate or show how things are connected to each other, and to what extent they are alike or affect each other.

Review

Look thoroughly into a subject. This should be a critical assessment and not merely descriptive.

Show how

Present, in a logical order, and with reference to relevant evidence the stages and combination of factors that give rise to something.

Sketch

Provide an overview of the main points with just enough detail to enable the object of discussion to be clearly identified.

State

To specify in clear terms the key aspects pertaining to a topic without being overly descriptive. Refer to evidence and examples where appropriate.

Summarise

Give a condensed version drawing out the main facts and omit superfluous information. Brief or general examples will normally suffice for this kind of answer.

To what extent

Evokes a similar response to questions containing 'How far...'. This type of question calls for a thorough assessment of the evidence in presenting your argument. Explore alternative explanations where they exist.

Trace

Identify and describe the development or history of a topic from some point or origin.

Verify

To check out and report on the accuracy of something.