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Definition

- **Trespass to Land:** A direct, intentional/negligent, unauthorised/unlawful interference with the land in possession of another person
- Usually refers to the defendant entering or remaining on the plaintiff's land (though this can also include the defendant causing an object to make contact with the person's property)
- Trespass is actionable per se: There does not need to be any actual damage to land.
- **Elements:**
 - a. **Direct Interference**
 - Trespass requires that the interference with the land was a direct result of the defendant's actions
 - *Southport Cop v Esso Petroleum 1954* → Ship captain discharged oil to lighten sinking vessel in order to save crew. Oil polluted the Southport coastline. Claim of trespass failed due to necessity, but judges also emphasised that the dumping of oil into water which then washed into a port lacked directness for trespass.
 - Indirect interferences fall under nuisance
 - b. **Intention/ Negligence**
 - D can only be liable where the trespass was intentional or negligent
 - *Public Transport Commission of NSW v Perry 1977* → Woman falling on to train tracks due to epileptic fit not trespass as she had entered tracks involuntarily
 - Different to mistake, which is no defence to torts such as trespass
 - D only must intend to commit the act. Not necessary that they were intending to commit the tort of trespass (e.g. *Smethurst*)
 - Incursion into land that was deliberate but the result of an honest mistake is still trespass
 - *James v North Star Pastoral 2019* → Building a fence that extended 2 meters into plaintiffs land was trespass, even though D thought they were doing so for a lawful purpose

c. 'Land' within possession of another person

- “Land” includes anything fixed to the land such as buildings. Does not include movable things such as vehicles → *XL v Caltex 1985*
- Also includes area above and below the land (to certain extent)
 - Traditionally, whoever owned surface also owned entire airspace and ground below (*Cuius est solum..*). In modern times, limitations have been placed on this
- Airspace Above Land
 - An occupier is in possession of the airspace above the land to a height necessary for the actual or potential ordinary use or enjoyment of the land
 - **Structures**
 - **Test:** Was the incursion into the air of a nature that it may interfere with any reasonable and ordinary use of the land by the occupier. → *LJP Investments v Howard Chia*
 - Does not require an interference with the occupier's actual use of the land at the time, just that it may interfere with a potential use
 - **Flights**
 - *Bernstein v Sky views 1978*: Helicopter entering airspace to take aerial photos of land not a trespass because it stayed above the height required for use of the land
 - *Civil Liability Act 2002 (s 72)*: No action lies in trespass or nuisance by reason only of flight of an aircraft over property at a reasonable height (having regard to wind, weather etc) so long as Air Navigation Regulations were complied with
- Underground
 - An occupier also has possession of the soil beneath their land to a “considerable depth” → *Di Napoli v New Beach Apartments*
 - **Test:** It is assumed that the owner of the land will own all soil beneath it, so long as the depth in question is not ‘absurd’ → *Bocardo v Star Energy*
 - Absurdity = only at depths when soil is unusable and thus not worth arguing about. Anywhere that can be reached by human activity is not absurd and landowners therefore have rights over that soil.
 - Simpler than in airspace. Does not require interference with ordinary and reasonable use of land for intrusion into subsoil to be trespass
 - Note: P's ownership of soil can be revoked by relevant common law or statute → *Bocardo v Star Energy*

Duress

- Duress = where a person is forced to enter into an agreement through threat of a wrongful act
- If duress is established, contract will be rescinded
- **Types of Duress:**
 - Person = threat to harm person
 - Property = threat to damage or destroy property
 - Economic = threat to economic interests
- **Burden of Proof**
 - Onus is on person alleging the duress to establish that there was illegitimate pressure
 - Onus then shifts on the other party to show that the pressure made no contribution on victim's decision to enter contract

Generally

- **Elements** → *Crescendo Management v Westpac Banking Corp 1988*
 1. **Victim was induced to enter a contract by a threat/ pressure by D**
 - The pressure must have had a causal effect on the parties entrance into the contract
 - It is not required that the pressure was the sole reason for entering into the contract. (*Crescendo*)
 2. **The pressure went beyond what the law is prepared to consider as legitimate**

Pressure *may be* illegitimate where it is either:

 - a) **An unlawful threat (ie a threat to do something illegal such as commit crime or tort) or**
 - A threat to break/ not performs a contract can fall under unlawful conduct → *North Ocean Shipping 1979*
 - b) **A threat to take lawful action that amounts to unconscionable conduct**
 - Conduct is only 'unconsciounable' where one party exploits the other parties position of disadvantage. General unfair conduct not enough (*Crescendo*)
 - VERY HIGH BAR: Pressure must by "morally reprehensible" such that it would be unconsciounable to enforce a contract induced by that pressure → *TT v PIAC 2021*
 - NOT IN NSW
 - *ANZ Banking Group v Karem 2005* → NSWCCA held that in NSW, duress is limited to situations of threatened or actual unlawful conduct. Pressure induced by lawful conduct should be dealt with under other vitiating factors such as unconscionable conduct
 - Not entirely decided: Nettle J in *Thorne v Kennedy* suggested that *ANZ* was wrongly decided. No determinate position has been taken by High Court.

A. Remoteness

- For a loss to be recoverable, it must fall within one of the two limbs of remoteness established in *Hadley v Baxendale*:
- NOTE: All physical damage falls under limb 1. Only need to consider Limb 2 for financial loss

1. Limb One: Loss arising naturally according to the usual course of things flowing from the breach

- Loss that any similar plaintiff would have suffered from the breach
- **Test**: Whether a reasonable person in D's position would have contemplated that the loss was a 'serious possibility' or 'not unlikely to occur' → *Koufos*
- Objective test has subjective element – need to consider what info/knowledge D had to determine what a reasonable person in their position would have contemplated
 - Are they in the industry and so have a good understanding of the effect the breach would have on the business? (e.g. *engineers with the boiler in Victoria Laundry*)
 - Or do they have no way of knowing about the impact? (e.g. *a mere carrier shipping the a shaft not knowing it was essential for the mill running and not a mere standby part like in Hadley v Baxendale (1854)*)
- Examples:
 - *Koufos*: Ship chartering sugar arrived 5 days late. By this time, market price for sugar had dropped. General damages could be claimed for loss of profit despite P not having told D expressly that they intended to sell the sugar on the day. Was not unlikely that they may have intended to sell the sugar on that day, and loss was in reasonable course of things.

2. Limb Two: Any damage that was not necessarily a natural effect of the breach, but that was within the contemplation of both parties when the contract was made

- Similar test re whether D would have contemplated as serious possibility, but more emphasis is placed on the specific circumstances and subjective knowledge of D
- D must have had actual knowledge that allowed them to contemplate that type of loss as a possibility. Usually requires that the special circumstances have been communicated to D → *Victoria Laundry*
- Examples:
 - *Victoria Laundry*: Special damages for loss of income/profit due to losing government contract was not recoverable because D had no knowledge of these additional arrangements. Could only claim general damages