

WEEK 2 – TRESPASS DEFENCES AND REMEDIES

Defences

1. **Consent**, is valid if:
 - a. Act within scope of consent: *Barker v Queen*
 - b. Not obtained by fraud: *R v Williams*
 - c. Not obtained by duress: *Aldrige v Booth*
 - d. Capacity to consent: *Gillick v West Norfolk AHA* (including people <18)
2. **Necessity** – full defence, defendant proves:
 - a. Imminent threat of grave harm to plaintiff, property or goods: *London Borough Southwark v Williams*
 - b. Reasonable apparent necessity of taking such action: *Cope v Sharpe*
 - c. Imminent threat not by fault of defendant: *Rigby v Chief Constable of Northamptonshire*
3. **Self-defence** – full defence, trespass to person only – defendant's interference is justified by the need to avert a threat of harm: [s 271 Criminal Code](#). Defendant proves:
 - a. It was reasonable to defend self from plaintiff
 - b. Force used was reasonable: *Fontin v Katapodis*
4. **Defence of another** – full defence, trespass to person only – use of reasonable force to defend another: [s 273 Criminal Code](#). Defendant proves:
 - a. Reasonable grounds to believe assault about to happen
 - b. Reasonable force used: *Goss v Nicholas*; *Howard v Wing*
5. **Provocation**: [s 269 Criminal Code](#). Trespass to person only. Defendant proves:
 - a. Acted in head of moment in response to provocation of plaintiff
 - b. Force used was proportionate: *White v Connolly*

Remedies

1. **Self help / abatement**
 - a. Take steps to stop a trespass
 - b. Must be reasonable: *Cowell v Rosehill Racecourse*
2. **Damages** – actionable per se
 - a. Nominal – no loss suffered, token amount.
 - b. Compensatory – loss suffered, aims to restore plaintiff to position as if no trespass occurred
 - i. For trespass to land = decrease in value of land
 - c. Aggravated – compensation for injury to feelings / humiliation: *TCN Channel Nine v Anning*; *Myer Stores v Soo*
 - i. Not in cases of personal injury: [s 52 CLA](#)
 - d. Exemplary/punitive – to punish and deter: *XL Petroleum v Caltex Oil*
 - i. Usually when defendant has demonstrated blatant disregard for rights of plaintiff
 - ii. Not in cases of personal injury unless done with intent to cause personal injury or was unlawful sexual assault: [s 52 CLA](#)
3. **Injunction** – must convince court that damages are not an adequate remedy
 - a. Interlocutory injunction – stop until court determination to maintain status quo
 - b. Mandatory – order defendant to do something
 - c. Prohibitory – order defendant to stop doing something
 - i. In cases of continuing trespass: *Graham v KD Morris*

Time limitation

1. If no personal injury – six years from date of arising of cause of action: [s 10\(1\)\(a\) LAA](#)
 - a. For continuing trespass, new action arises each day: *Konskier v Goodman*
2. If personal injury – three years from date of arising of cause of action: [s 11 LAA](#)