

Trespass

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Introduction

Proprietary rights

Trespass is a tort.

It does not need to involve any damage.

The remedy is injunction, damages, or both.

The trespasser can also be ejected using reasonable force.

Convention rights

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Statutory offences

Under the Theft Act 1968, section 9, a person is guilty of burglary if he enters a building as a trespasser and attempts to steal or damage anything in the building and on conviction on indictment is liable to imprisonment for up to fourteen years.

Under the Criminal Law Act 1977, section 6, anyone who without authority uses or threatens violence to any person or property in order to gain entry into any premises for himself or another when there is someone there opposed to such entry is liable to arrest and on summary conviction to imprisonment for up to six months or a fine at level 5, £5,000, or both.

Under the Criminal Justice and Public Order Act 1994, Part V, anyone who satisfies certain conditions and has been directed by a police officer to leave land and either fails to leave the land as soon as reasonably practicable or comes back within three months commits an offence, can be arrested without a

warrant, and is liable on summary conviction to up to three months in prison or a fine of up to level 4 on the standard scale, £2,500, or both.

Under the Serious Organised Crime and Police Act 2005, section 127, a police constable may direct a person to leave the vicinity of premises and not return within a period as the constable may specify of up to three months, failure to comply with which renders him liable on summary conviction to imprisonment for up to 51 weeks or a fine not exceeding level 4 on the standard scale, £2,500, or both.

Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 144 is the new offence of squatting in a residential building which attracts imprisonment of up to 51 weeks or a fine on level 5 on the standard scale, £5,000, or both.

Access

May be needed for maintenance of a building.

May be needed for works to a building, perhaps just in its construction.

May be needed for construction or maintenance of a wall.

May be needed for a crane oversail.

Permission

To avoid trespass, and the risk of injunction, you could get consent.

Whilst it is well known that cats are never afraid of asking, people often are.

However, a refused request effectively brings the bad news that there will be no access.

Subterfuge

Perhaps better to do it quietly and hope either no-one notices, or if they do, the work can be finished before they can get an injunction or get a friendly policeman to give the necessary direction and make an arrest.

There is always a risk as injunctions can be got very quickly; you only need a judge, a sworn statement, an undertaking in damages on an indemnity basis, and either nerves of steel or enough stupidity to follow it through. The risk of the police actually turning up is perhaps variable, as is the risk that the landowner may simply know a lot of large people who are happy to help him exercise his common law right of self help.

Statutory rights

However, to the rescue comes the law.

ANLA

The Access to Neighbouring Land Act enables access to be obtained through the courts where necessary for the maintenance and preservation of land. Whilst this does include taking down and rebuilding, it also generally involves lawyers and costs in terms of time and money, sometimes compensation, and is very rarely used.

PWeA

The Party Wall etc Act is far more friendly.

It developed from legislation in London after the Great Fire in 1666 and a tad over three hundred years later its benefits to developers were extended to the rest of England and Wales.

It facilitates construction and the full use of a parcel of land by codifying rights over the generally shared ownership of party walls, granting protection to foundations that might not otherwise exist through prescription or agreement, by giving rights of temporary access to facilitate at times permanent works on the adjoining land.

It is administered by surveyors rather than lawyers, and the courts generally don't get a look in until all is settled by those surveyors.

Access rights under the PWeA

Section 8

Section 8 gives a right of access to adjoining land for the purpose of executing any work in pursuance of this Act, provided fourteen days' notice is served or there is an emergency.

Section 2

Section 2 relates to works to party walls, essentially where there is a form of shared ownership and rights are given over the adjoining owner's property.

Without the Act, rebuilding next-door's half of the party wall would be a trespass, but with it, it's not.

And you get a right of access to do it. And they get fined if they try to stop you.

There is clearly a right of access as the work is in pursuance of the Act.

Section 1

Under section 1, notice has to be given before building a new wall on the boundary.

The only right given over next-door's land is to place projecting footings between one and twelve months after service of notice.

There is clearly a right of access to do that, but not so clearly to build the wall.

Section 6

Section 6 controls excavation.

Notice has to be served if there is an intention to excavate within prescribed distances of other people's buildings.

There is a right to underpin or otherwise safeguard the foundations of next door's building, and if that is not intended, he has a right to demand it. The dispute is determined by the surveyors.

This section has two main effects:

Firstly it removes any question as to whether next door has any right to support to his building, which he may well not have, particularly if none was granted and none acquired by prescription.

Secondly, it gives the building owner the right to underpin that building on its own land, thereby preventing its existence hindering full development of the building owner's land.

Clearly there is a right of access for underpinning or other safeguarding, as it is work in pursuance.

Section 7

This section prevents the placing of foundations necessary for the construction of the wall on adjoining land permitted under s1 without consent if they are special, for which see my papers on special foundations.

It also, and most importantly, effectively states that all rights granted by the Act are subject to not causing unnecessary inconvenience to any adjoining owner or to any adjoining occupier.

This is important because it goes to the very heart of the Act.

Much as failure to serve notice properly, without which we would never have had the P&T, no right can be exercised so as to cause unnecessary inconvenience. Whilst there is the right to cause necessary inconvenience,

including damage, with compensation ad making good following, there is no right to carry out work, even otherwise authorised by the Act, so as to cause unnecessary inconvenience. With no right to do the work, it follows that there is no right of access, and no right to avoid claims in nuisance even where such nuisance necessarily followed the carrying out of the work.

Examples

Basements

Typically to add a basement extension a building owner will want to underpin the party walls, using that underpinning for both enclosure of his new basement room and also for retaining next door's land.

Simply he might choose to form a reinforced concrete box under his existing building.

This is often considered to have problems.

First and most importantly the load of the party wall may now be taken by the new box, effectively on the building owner's land, and so outside the control of the adjoining owner. If the adjoining owner later wants to excavate, he cannot easily underpin the party wall as he cannot tell where the foundation is. If a successor to the building owner removes his basement floor to excavate further, he may be surprised at finding he has removed a significant part of the foundation to the party walls, and is relying on a combination of structural apathy and over-engineering of the design to prevent a collapse of his building followed by those either side.

However the underpinning is formed, it is likely to be unnecessarily inconvenient to the adjoining owner if it is placed too far onto his land and so central to the existing party wall is probably the safest bet.

Boundary walls

This is simple. Can I put a scaffold on next door's garden so I can build my own wall on my own land?

The answer must be no, because there is no statutory right given to build a wall on your own land, but the courts, persuaded by lawyers, have held that the Act removes all common law rights and replaces them with its own code, and that "in pursuance of" means anything referred to, so the answer is yes.

The courts, or at least one of them, has decided on a similar basis that appointed surveyors are not arbitrators but some sort of special expert and so the

section 10 procedure is not a statutory arbitration, so their decisions are sometimes apparently perverse.

Conclusion

Trespass

Trespass can get you in gaol for up to fourteen years, and fined up to £5,000 for each offence.

Following the statutory provisions

Following the statutory provisions to gain access can cost you a few thousand pounds and avoid unexpected delay to the contract as well as avoiding missing Christmas at home because you have to spend it at Her Majesty's pleasure.

As a North American lawyer and president of Harvard once said, If you think education is expensive, try ignorance.

Unless you are capable of making a comeback on chat shows after spending time in prison, it might be better to stick to the lawful methods of getting work done on other people's land.

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