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Trespass Rights of the Surveyor



The right of a surveyor to trespass upon another's land for the purpose of searching for monuments and recording measurements is presumed by all surveyors. It is common practice for the surveyors to enter upon a parcel of land, without the consent of the owner, and make those measurements that are necessary for the survey being performed. Foundation for this right is lacking in common law. In the absence of a statute law giving a surveyor trespass rights, a surveyor who enters upon the land of another without permission is an intruder without rights, and the mere trampling of herbage or grass may be sufficient cause for damages.

William L. Possner, one of the best-known legal scholars on the law of torts stated:

The law pertaining to trespass upon land has been described as both exceptionally simple and exceptionally rigorous. In the eyes of the common law, every unauthorized entry upon the soil of another was a trespass, for the law bounds every man's property and is his fence . . . The common law action of trespass could be maintained without proof of any actual damage. From every direct entry upon the soil of another, the law infers some damage, if nothing more, the treading down of grass or herbage.

What the surveyor must understand is that any physical entry upon the surface of the land is a trespass, whether it be by walking upon it, casting objects upon it, or otherwise. One may commit a trespass upon the vertical surface of another's premises, as well as the horizontal—as where he piles dirt or attaches wires against a boundary wall.

But the interest in exclusive possession is not limited to the surfaces; it extends above to the heavens, and below—well, who knows to where. There is a property right in the airspace above land, which may be invaded by overhanging structures, or telephone wires, by thrust-

The Law of Trespass is always a very interesting subject for the land surveyor, in that the surveyor seems to believe that he has the right to go onto anyone's property to recover monuments or run a traverse. But that right, with certain exceptions, is not a part of our law. The surveyor has to understand that a property owner who alleges a trespass can seek civil relief, asking for compensatory and punitive damages, and have the surveyor criminally charged.

It is the general rule that once it has been determined that a trespass has been committed, the trespasser's responsibility is carried to the consequences for which he is liable and that liability will include all damages proximately caused to the

property, although such damage is not the result of any negligent or wrongful act beyond the mere trespass itself. That is, every **unauthorized entry** on the land of another constitutes a trespass.

It is also clear that every trespass to real property is considered to result in injury for which the wronged party is entitled to at least nominal damages, whether or not the trespass was willful. Punitive damages may be allowed in an action of trespass, as where the wrongful act was willful, wanton, reckless, malicious or fraudulent, although such damages will not be allowed when there was no element of fraud, malice, evil intent, or oppression.

In an often-quoted principal on the law of trespass by a land surveyor, the imminent and late Curtis M. Brown stated:

ing an arm across the boundary line, or by shooting across the land, even though the bullets do not fall upon it.

But in saying all of that, surveyors must examine the various statutes that have been enacted in their own individual state that may offer some protection from liability. Many states have such statutes, and then again, many do not. Even when there may be a particular statute that would allow a surveyor to cross over an adjoining property for surveying purposes, those statutes do not confer a license to engage in a course of destroying crops and timber, etc. The mere cutting of brush to get a line of sight that causes damage to the vegetation existing on the land could result in a claim for damages.

Always keep in mind that while a decision from one state appeals court may not be controlling upon an appeals court in another state, the decision may be persuasive and entitled to great respect. Here are some of those decisions:

In *Indiana & Michigan Electric Co. v. Stevenson*, 363 N.E. 2d 1254 (Indiana, 1977), \$420 in compensatory damages and \$100,000 punitive damages were awarded to the landowner as a result of a power company's survey crew illegally removing corn to clear a line of sight. This award was made even though the power company was in the process of establishing what it wanted to take under eminent domain.

In *Ragland v. Clarson*, 259 So.2d 757, (Florida, 1972), a lawsuit was filed against a surveyor for damage from the cutting of plants and trees, and other growth on plaintiff's land, notwithstanding a Florida statute that allowed registered engineers and land surveyors permission and authority to go on, over and upon the lands of others when necessary so to do to make land surveys. The surveyors could enter upon the land, but they would be held responsible for any destruction, injuries and damages that they may cause, without the written permission of the landowner.

One of my favorite cases is *LaBruno v. Lawrence*, 64 N.J. Super. 570, 166 A.2d 822 (New Jersey, 1960), which is the leading case in America concerning an award of punitive damages against a land surveyor, and it should act as a warning to all surveyors who wish to be reasonable and prudent. This case involved an action for trespass to real

property resulting from the wrongful erection of a fence. The LaBrunos and the Smiths were adjoining property owners. The Smiths, desiring to build a side wire fence to separate their property from that of the LaBrunos, requested the defendant, Lawrence, a local surveyor who had made the original survey, to stake out the common boundary line. Lawrence went to the property and placed three boundary stakes in the ground, one in the front, one in the rear, and a third in the middle of the LaBrunos' flowerbed. Mr. LaBruno, having been informed thereof that evening by his wife, immediately took measurements from the stakes and compared them with the survey, which he had obtained when the home was purchased.

by the Smiths along that boundary line would damage the LaBruno walk, patio and flowerbed. As a surveyor, he knew or should have known that the Smiths and their contractor would probably rely upon Lawrence's professional skill and judgment in erecting the fence. The Appeals Court said that Lawrence demonstrated a willful and wanton disregard for the property rights of the LaBrunos that was reasonably calculated to aggravate his original mistaken trespass by the consequent trespasses of the contractors and others, and therefore the *punitive damages* against Lawrence were upheld.

Some states have enacted statutes that would at least relieve land surveyors from criminal prosecution for trespass,

Many states have such statutes, and then again, many do not.

This survey, also prepared by Lawrence, revealed that the stakes had been placed one foot over on the LaBruno property.

Mr. LaBruno then went to Lawrence's office to have the survey checked out, but Lawrence refused to check his own prior survey, and thereafter, the fence was erected on the wrong line. In building the fence, the contractor had to remove the LaBrunos' flowerbed and break off portions of the walk and patio, which had been painstakingly constructed by Mrs. LaBruno two years before. Later, the error was discovered and the fence was reconstructed on the true boundary line.

In the appeal of the lawsuit against Lawrence, the court said that Lawrence aggravated his original trespass by mistake, by his stubborn refusal to examine his own prior survey and to correct his alleged error, when the matter was originally called to his attention by Mr. LaBruno. Even when LaBruno put it to him that he had to be wrong one time or the other, Lawrence said: "I'll cross that bridge when I come to it." Lawrence was fully aware from his personal inspection, when he placed the stakes, that the erection of the fence

while retaining liability in civil actions. In the Commonwealth of Virginia such a bill was introduced in the Senate awhile back, but failed after many speakers branded it as "an invasion of property rights," and charging that "a man's home is his castle." A sampling of the comments from the legislators reveal how heated this issue can get by both the proponents and the opponents: "How can a surveyor set up a tripod on a property line without at least one leg being planted on someone else's property?" or, "This bill just guts absolutely the rights of property ownership . . ." and, when a notice provision was proposed, one senator said, "Often the owner doesn't even live there—he may be in Europe—he may live in the city. How are you going to get his permission?" When another senator was asked what a surveyor does on timberland when a tree stands in the way of his line of sight, the response was, "He cuts it down," to which another senator responded, "*They carry machetes and cut their way through and then they are gone.*"

As always, please be aware of your own state laws on the subject of trespass by a surveyor, both civil and criminal. *AS*