AILET

Legal Reasoning Practice Questions on Trespass

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1. Every person has a right to complete immunity of his person from physical interference of others, except in so far as the contact may be necessary under the general doctrine of privilege.

A cancer patient, Omerta Sen, undergoing treatment in a hospital, reached the terminal stage. It was clear to everyone including the personal physician of the patient, Dr. Joseph Piglitz, that the patient did not have much time. At that stage, the specialist doctor in charge of the treatment, Dr. Jagdish Lokneeti, administered a drug which was at the stage of experimentation without the consent of the patient. The experiment had established that the drug could control the spread of cancer cells to some extent. Omerta Sen died soon after. When the relatives of Mr. Sen came to know about this incident, they filed a suit against the hospital, the United South Asian (USA) Hospital, and the Jagdish Lokneeti charging them for assault and battery, i.e. unjustified physical interference.

- Lokneeti is liable, since he has acted without the consent of the patient.
- Lokneeti is not liable, since he was motivated by the welfare of the patient.
- Lokneeti is not liable, since it was in the general public interest that the new drugs should be developed.
- Lokneeti is liable since he should have notified the patient's relatives instead who would have been able to make a more informed decision.

(a – the case of public welfare is questionable since the drug was experimental and there is no proof of its efficacy. Allowing public welfare as an excuse in such serious cases would put matters in grave jeopardy. There's nothing to indicate the patient's disability to consent, and option 'd' seems practical, but is unnecessary, since the patient's consent sits above his relatives')

1. A person, intentionally causing harm to others, is liable for battery. A person is said to have intended the harm, in so far as he brings about the harm purposefully or knowingly.

A teacher, Slomo Shaukeen, suffering from back problems was moving around the class room in the course of teaching. As he was moving backwards to reach his chair, a student, Vikramaditya Behra (hence he did not hear the fact that Slomo had back issues) saw a scorpion moving underneath the chair and immediately rushed to attack the scorpion, and in that process, moved the chair. Meanwhile, Slomo landed straight on the ground, rather in swift motion, and suffered a slipped disc. A suit was filed against the student for battery.

- The student is not liable, since he wanted to save the teacher and others from the scorpion.
- The student is liable, since he knew that the teacher would be taking her seat.
- The student should be held additionally liable for the lack of attention to the teaching.
- The student could have given a vocal warning about the scorpion.

(a)

1. An occupier is liable to a trespasser in respect of some wilful act intended to cause harm or done with reckless disregard.

Facts : A farmhouse belonging to Raju had its fencing electrified. The object was to ensure that the farm was secured from any wild animals in the vicinity. There was a clear warning about the electrified fencing. A cricket ball, hit from a nearby play ground, fell within the farm. Babu Rao, the coach conducting the summer camp for school going children there, attempted to jump the fence to retrieve the ball, got injured on account of the electric shock sustained. Babu Rao files a suit against Raju for relief.

- Raju will not be liable, because Babu Rao was a trespasser.
- Raju will not be liable, because he had given sufficient warning about the electric fence.
- Raju will be liable because he must have taken note of the adjacent playground.
- Raju will not be liable since Babu Rao’s lunacy is a matter which is not in his hands.

(b – a warning clearly indicates that he did not intend to cause wilful harm.)

1. Priyanka lives in the Rajarhat area of Kolkata. Constanza a boy from her college had, inter alia, started following her, making silent telephone calls and writing on her door, and which could be described as stalking, writing over 800 letters to her in the space of 4 months, which caused her to suffer panic attacks. Constanza had delivered a letter by hand which when read by Priyanka, caused her to believe that Constanza had completely lost his mind and would use

force against her. There was medical evidence that Priyanka was suffering from a clinical state of depression and anxiety. Decide.

- This was not a case of assault since there was no perceivable or imminent harm.
- Constanza's words were not backed by any physical actions, which is requisite for assault.
- Constanza's actions were enough to cause a reasonable apprehension in Priyanka's mind; thus, he is liable for assault.
- None of the above.

(c – the first two arguments were forwarded by the defence, and they had failed. The facts are based on the English case, *R v. Constanza*.)

1. An occupier is not, normally liable to a trespasser except in respect of wilful act intended to cause harm or done with reckless disregard.

Pran, a bigshot in the locality had kept a ferocious dog to guard his house. He strictly instructed all his servants not to go near that dog and there was a special attendant who was to take care of the dog. There was a prominent board warning the visitors about the ferocious dog. One day, a twelve-year-old boy playing in the neighbourhood, running after his ball got into the house. The dog attacked him and killed him. Pran was sued for damages.

- Pran is not liable, because the boy was a trespasser.
- Pran is not liable, because a twelve year boy ought to have known about the presence of the ferocious dog.
- Pran is liable for the negligence of his servant to keep watch on such a ferocious dog during the day time.
- Pran is not liable since he had taken reasonable precautions to prevent unnecessary harm.

(d)

1. The occupier of a premise owes a duty of care to all his invitees and visitors.

Debarshi was running a dairy farm in his house. A part of his farm was used by the people as a short cut to get into the nearby railways station. Debarshi never liked it and put up a board that "All trespassers will be prosecuted". But he actually tolerated them, because quite a few of them patronised his-business. One day, a person, who was crossing the farm to get into the railway station, was attacked by a bull belonging to the farm. The injured person filed a suit against

Debarshi.

- Debarshi is not liable in view of the clear notice against trespassers.
- Debarshi is liable, because he in fact allowed the people to use his premises.
- Debarshi is not liable to the people other than his customers.
- Debarshi is liable since he impliedly invited them to use his farm by not blocking the short cut completely.

(d)

1. A 16-year old boy was playing cricket in his neighbourhood. Now this boy is a little hot-headed, well-built, plays passionately and fights, both verbal and physical, even more passionately. Once the ball rolled onto an old man's lawns, which was enclosed by a fence. The gate was locked. The old man refused to let him in. The boy roared, "if it were not for your gray hairs, I would tear your heart out!". The old man runs hobbles in as quickly as his arthritic knees can take him and calls the police, the living daylights almost sucked right out of him. Can the court accept a claim of assault?

- No, since the boy was at a great distance from the man, who was also protected by the fence.
- Yes, since elderly folks can be easily spooked and in any case have several ailments which will compound even the smallest health issue.
- Yes, as the boy looked capable enough to cause an impression that he could carry out his threat.
- No, he did not create a reasonable apprehension of injury.

(d – the boy starts speaking with an "if" and joins it with a "(then) I would" which clearly indicates his intentions – he would not have done the act. Coupled with the fact that there was a fence and a considerable distance between the two, there is little scope of immediate harm. The fact that he is elderly bears no weight when we apply the 'reasonability test'. The facts are loosely based on the American case, *Commonwealth v. Eyre*.)

1. Hosni went to his local pharmacy to get some medicines. The pharmacist, Morsi, doubted the authenticity of the prescription. So, he stalled for time and instructed Hosni to wait while simultaneously and without the patient's knowledge calling the police. When the police arrived, they arrested the patient. The later police verified with his doctor that the prescription was authentic and that it was meant for him. After this incident, the patient sued the pharmacy

and its employees. He received $20,000 in damages. Morsi appealed the decision.

- Morsi would get relief since he had a reasonable suspicion and acted accordingly. He did not use force or physical restraint.
- The appeal would fail since Morsi could have verified the prescription by calling the doctor, so his acts were not reasonable.
- The appeal would fail since Hosni had to go through such mental agony.
- The appeal would succeed since Morsi's acts were well within his rights as a pharmacist, with medicines which could have fatalities with wrongful usage/dosage.

(a – the situation, as illustrated by the answer, does not meet the requirements of false imprisonment. Also, the facts are silent on how did Morsi stall Hosni, but he was unaware of the police coming or the need to stay till their arrival, so he can be assumed to be free to leave if he felt that he was getting late. Despite the fact that it would have been reasonable to call the doctor to verify, a single carelessness should not make Morsi guilty. The facts are based on the US case of *Taylor v. Johnson*.)

1. Megha owns a computer, like most other urbanites. She uses it to for both work and personal use. An issue that has been bothering her constantly is a flood of e-mails from "Bharatiya Jana Achar", a commercial enterprise run by its proprietor Amrit, claiming to sell the country's best pickles. They send about 20 e-mails a week, since they are so good that everyone must have a taste of it and be reminded of the same by e-mail at least thrice a day. Megha does not like pickles. She does not care about "BJA". She takes the matter to court, and sues them for trespass to chattel.

(*"Chattel" can be defined as movable personal property, whereas "property" usually means immovable property)*

- Amrit as a proprietor has a right to advertise his goods. Since e-mail is a free resource, Megha cannot have any complaints. Free apps and software are known to come with ads.
- Amrit's right ends where Megha's right begins. BJA is intruding into her personal/workspace, where she has the liberty to be without such interference.
- The e-mail is not a movable property, and hence, Megha's claim will fail.
- Amrit is causing unnecessary interference onto Megha's chattel. Every individual e-mail account is a chattel wherein only the user will have rights of access, apart from the service

provider.

(d – trespass to intangible property, such as e-mails, is a concept developed under US law. Now, CLAT simply restricts itself to good old trespass to land, but there is no remedy should they choose to venture out of the box – they are rather infamous for doing that some times. Also, 'd' gives the reasoning as to how an intangible qualifies as "chattel".)

1. Sky views Ltd., was a company which provided navigation and GPS services and devices. One day they were taking aerial photographs for mapping purposes. They were spotted by Bernstein, when the helicopter was passing several hundred feet over their house and taking photographs. He sued Sky views, alleging trespass of his airspace. Decide.

- Clicking photos of his house trespasses on his right of privacy, hence Skyviews is liable.
- There was no trespass since Skyviews did not go on to his land or property.
- Bernstein does own the entire airspace above his sky, but only to the reasonable extent that is necessary for his enjoyment. Hence, Skyviews are not liable for trespass.
- The fact that the helicopter was right over his house and clicking pictures of it, both of which bothered Bernstein, is enough to sustain a claim of trespass due to interference on his enjoyment.

(c – A major cornerstone or tort law is reasonableness. That, the helicopter was several hundred feet away, shows that Bernstein cannot reasonably derive any enjoyment from his airspace at such a distance, and thus, his claim fails.)

This article is posted in association with clatapult.com.

First published on January 10, 2021.