

Ingredients: 48 hours
as proposed and
during



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Ingredients: The following things are essential to establish the offence of criminal trespass— (i) Person's entry into or upon the property in the possession of another person; (ii) An entry of a person which was lawful at the time but has now become unlawful. The person is remaining unlawfully upon the property of another; (iii) Unlawful remaining upon the property of another must be followed with— (a) To commit an offence, or (b) To intimidate, insult or annoy person in the possession of the property.

Intention: The General Secretary of a registered Trade Union served notice on the General Manager of the factory stating that as a protest against the wrongful removal from service of their Vice-President, the Union officials would go on hunger strike for 48 hours from the date specified in the notice. Thereafter, Union workers pitched a tent inside factory premises and the General Secretary of the Union went on hunger strike for 48 hours as proposed and during that period inflammatory speeches were made by some persons including other accused against the high-handedness of the high officers of the factory. It was held that so far as the first part of Section 441 is concerned, the accused cannot be said to have committed any offence because the dominant intention of these persons was merely to draw the attention of the higher authorities of the factory against the dismissal of the Vice-President which according to them was wrongful.

They had given ample notice to the authorities which would go to show that they considered this action to be the legitimate object of Trade Union activities. The knowledge that such conduct might result in annoyance or intimidation would not make the act an offence of criminal trespass. Absence of Criminal Intent: Where there is a bona fide dispute of a civil right and the

accused exercises his right of way, he has no criminal intent to commit the two offences of criminal trespass. Similarly, in a case one ' S' gifted his property to a trust with condition that he would stay in the house till his death and the trust can take over the possession after that. During his lifetime, he invited his brother's wife who was a widow to stay in the house with him. After the death of ' S' the widow continued to stay and she was served with a notice to quit. On failure a complaint under Section 448 was filed.

Supreme Court held that in order to satisfy the conditions of Section 441, I. P. C., it must be established that the widow entered in possession over the premises with intent to commit an offence. She had no such intention therefore she would not be liable for criminal trespass. Constructive Possession—Criminal-Trespass against: Even if a person was in constructive and not actual possession of the property an offence of criminal-trespass would be made out if the trespasser while entering into or upon the property did so with the intention of taking unauthorised possession or making unauthorised use of the property and failed to withdraw upon notice given to him to do so. Exclusive Possession: Failure to prove exclusive possession of complainant is fatal to a prosecution for criminal trespass. A person can be guilty of trespass on his own land where his land rightly or wrongly is in possession of some other person and he enters into or upon such land with intent to commit an offence, or to intimidate, insult or annoy that person in possession of such property, or having lawfully entered into or upon such property unlawfully remains with intent thereby to intimidate, insult or annoy

that person, or with intent to annoy any other person, or with intent to commit an offence.

Definition of Criminal Trespass – Section 441 of Indian Penal Code: Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal “trespass” There are two kinds of property—movable and immovable. The offences dealing with the deprivation of property generally relate to movable property. There are indeed only three offences: extortion, criminal breach of trust and cheating in which immovable property may be involved but even in these offences movable property is generally the subject matter of the offences.

These three offences do not contain any statutory bar to immovable property becoming the subject-matter of such offences. In criminal breach of trust it is a controversial issue whether it can be committed against immovable property. The High Courts of Bombay and Calcutta have held that criminal breach of trust can be committed against movable property only on the basis that one of the ingredients of such offence is dishonest misappropriation or conversion which as defined in Section 403 can be committed only against movable property while the High Courts of Allahabad and Madras have held that the definition of criminal breach of trust in Section 405 does not qualify the word “property” used therein; and in the absence of any qualifying expression it would be dangerous to restrict the word so as to mean only

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movable property and that as such the offence of criminal breach of trust can be committed against immovable property also. This aspect has been discussed in detail in the treatment of criminal breach of trust in the foregoing pages and to revive the controversy here would be foreign to our purpose, our object here being only to recognise that while movable property has so far been our main concern of studies, the exclusive concern of criminal trespass we are now going to study in case of immovable property. The one outstanding fact about trespass is that it always relates to immovable property. The right to property does not extend to mere user of property; it embraces also the privacy of such user. A person may not only enjoy the benefits of property belonging to him or in his legitimate possession but he may enjoy them to the exclusion of and in privacy from others. Privacy is an essential element in human life; it is essential for growth and development of human personality and in its own peculiar manner contributes to human happiness.

That man is social is true, that he is absolutely social, is not. While he loves the company of his fellow-men without which he may either degenerate into a beast or be elevated to the stature of a God, he requires also withdrawal from such company as a relief or punctuation. In privacy one is indeed more of one's own self than under the strain of social formalities, besides, as the paradox of life is, social relations are better enjoyed in privacy. Privacy gives us an ease and security of feeling. It is the anchor of saints and sinners: between these two there is none who may not need it, law also gives due recognition to this important aspect of life.

As Lord Coke observed in 1605 in Semayne's case, "The house of everyone is to him as his castle and fortress, as well for defence against injury and violence, as for his repose".