

Necessity—The Major Rules

I. Public Necessity

[A]. **Trigger and Action:** You may commit an act that would otherwise constitute a trespass to land or trespass to chattels of the private property interest of another in an effort to prevent an imminent disaster to the community affecting real or personal property or persons **IF:**

- [1]. You actually and reasonably believed that action was needed; and
- [2]. The action you took was reasonable under the circumstances.

[B]. **Effect.**

- [1]. As a matter of common law, public necessity is a complete defense to any suit for trespass to land or trespass to chattels.
 - [a]. In some circumstances, statutes or constitutional provisions require you to compensate the π for any losses resulting from the trespass to land or trespass to chattels. The legislative or constitutional language is critical; compensation might be limited to certain circumstances and only if a state actor is involved.
- [2]. If, while you are trespassing, the owner of the private property tries to oust or repel you, they are not permitted to do so. Your necessity trumps their ability to defend their property—a defense they would assert if you sued them for trespass or battery. And if they do oust you, and you or your property are injured/damaged in the process, you can sue the property owner for an intentional tort (e.g., battery or trespass).

II. Private Necessity

[A]. **Trigger and Action:** You may commit an act that would otherwise constitute a trespass to land or trespass to chattels of the private property interest of another in an effort to prevent an imminent harm to yourself or your property or to a third person or their property **IF:**

- [1]. You actually and reasonably believed that action was needed; and
- [2]. The action you took was reasonable under the circumstances.

[B]. **Effect.**

- [1]. As a matter of common law, private necessity is **not** a defense **if**, in the process of trespassing you cause actual damage to someone's land or chattels. The property owner will be able to sue you for trespass and recover damages.
- [2]. If, while you are trespassing, the owner of the private property tries to oust or repel you, they are not permitted to do so. Your necessity trumps their ability to defend their property—a defense they would assert if you sued them for trespass or battery. And if they do oust you, and you or your property are injured/damaged in the process, you can sue the property owner for an intentional tort (e.g., battery or trespass).