

Trees - And The Problems They Cause

By Kelly G. Richardson, Esq.

Trees offer more than shade. A tree can be a landmark, food source, subject for paintings... or cause of a lawsuit.

Put Down The Saw. Your tree may not be your own. While landowners often regard their yard with as part of their "castle", in many communities, trees are considered a community asset. California cities including Pasadena, Manhattan Beach, San Juan Capistrano, and Palo Alto and the County of Ventura, and cities around the country, including Charlotte, Atlanta, San Antonio and Miami, all have ordinances prohibiting property owners from cutting trees down on their property.

Even if the ordinance allows you to cut down your tree, you may not cut down your neighbor's tree (without their consent). Under traditional English common law, the source of much of our civil law traditions, trees were not considered personal property, but were considered an asset of the real property. The tort of "waste," or damage to real property, has for hundreds of years been the claim in response to the wrongful act of cutting down trees, damaging the value of the land. So, cutting down a neighbor's tree has been a bad idea for literally centuries.

Who Owns The Tree, And Who Is Liable? When tree branches begin to encroach onto a neighboring property roof, or roots break up the sidewalk or driveway next door, the first question is "who pays?"

Generally speaking, the owner of land has the right to the surface and everything beneath it, pursuant to California Civil Code Section 829.

Tree Ownership: Under Civil Code Section 833, trees are considered owned by the owner of the land on which the trunk of the tree stands, even though roots may spread into neighboring property:

"Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another."

Shared trees: If a tree trunk crosses a property line, it is considered co-owned by those property owners, under Civil Code Section 834:

"Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common."

Encroaching roots and branches: Traditionally, under longstanding authority (since at least 1886), roots and branches encroaching into the air space or ground of adjacent property may be removed by the adjacent

owner. A tree encroaching into the property of another is a legal nuisance. No negligence need be shown, only that there is an encroachment from the property of one owner (the tree) into the property of another. Damage caused by the nuisance is the responsibility of the party whose property created the nuisance.

This rule of responsibility for roots and branches dates at least back to 1886, the year of the California Supreme Court's decision in Grandona v. Lovdal (70 Cal. 161). In the wonderful brevity of the courts in those days, the Court issued its ruling in two paragraphs. The pertinent portion, at page 162, stated:

"Trees whose branches extend over the land of another are not nuisances, except to the extent to which the branches overhang the adjoining land. To that extent they *are* nuisances, and the person over whose land they extend may cut them off or have his action for damages, and an abatement of the nuisance against the owner or occupant of the land on which they grow, but he may not cut down the tree, neither can he cut the branches thereof beyond the extent to which they overhang his soil."

This rule was followed more recently in Bonde v. Bishop, 112 Cal. App. 2d 1 (1952), in a dispute between two neighbors. In that case, a large branch fell onto the plaintiff's garage, causing substantial damage. The court opinion provided a somewhat more thorough survey of the law while following the Grandona v. Lovdal opinion.

However, more recent cases limit the right to cut down or remove encroaching roots and branches, previously thought to be unlimited. In Booska v. Patel, 24 Cal. App. 4th 1786 (1994) the appellate court held that a neighbor who cut encroaching roots might be liable for negligence in killing the tree. The court held that while the neighbor has a right to remove encroaching roots, there is still a duty to do so reasonably.

As to damage caused by roots or branches, the law is clear - The tree's owner is responsible. The owner of the affected property may remove the encroaching roots or branches, but must do so in a manner not to harm the tree. What if the tree's roots are essential to its survival, yet are causing great damage to the neighboring property? Presumably, at some point a court might order the tree removed, in addition to holding the tree's owner responsible for the damage. Neighborly cooperation is key, and nothing major should be done without an arborist consultation.

Kelly G. Richardson, Esq. is Partner of Richardson Ober DeNichilo LLP and is a broker and member of CAR.