

TREES . . . And The Problems They Cause

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Trees offer more than shade. They can be landmarks, a food source, a subject for paintings or the subject 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, the tree is 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.

Under traditional common law, trees were not considered personal property, but were considered an asset of the real property. The tort of "waste," or damage to real property, was commonly applied to remedy the wrongful act of cutting down a neighbor's trees. So, cutting down a neighbor's tree has been a bad idea for centuries.

Who Owns the Tree, and Who Is Liable For Its Damage?

When tree branches begin to encroach onto a neighboring property roof or roots break up the sidewalk or driveway next door, responsibility is a common question.

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

Under Civil Code Section 833 (enacted in 1872), trees are considered owned by the owner of the land in which the trunk of the tree stands, even though the roots may spread out into a neighboring property. That law states: "Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another."

If a tree trunk crosses a property line, it is considered co-owned by those property owners, under Civil Code Section 834 (also law since 1872):

"Trees whose trunks stand partly on the land of two or more coterminous owners, belong to them in common." However, under similarly long-established (since at least 1886) authority, roots and branches of a tree which encroach into the air space or ground of a surrounding property may be removed by the neighboring property owner. A tree that encroaches into the property of another is a legal nuisance. No negligence is required to 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, when the case of *Grandona v. Lovdal* (70 Cal. 161) was decided by the California Supreme Court. In the wonderful brevity of the courts in those days, the court issued its ruling in two paragraphs. The pertinent portion to the current issue is as follows: "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." *Id.*, at 162. 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 from a neighbor's oak tree onto the plaintiff's garage, causing substantial damage. The court opinion provided a somewhat more

thorough survey of the legal issue, but the core of its ruling was its following of the *Grandona v. Lovdal* opinion. The right to cut down or remove encroaching roots and branches is not necessarily absolute. One recent case, *Booska v. Patel*, 24 Cal. App. 4th 1786 (1994) held that a neighbor who cut the encroaching roots might be liable for negligence in killing the tree. The court held that while the neighbor has a right to remove the roots, there is still a duty to act reasonably.

As to damage caused by tree roots or tree branches, the law is quite clear. The owner of the tree is responsible. The owner of the property may remove the encroaching roots or branches, but must do so in a manner not to harm the tree.

If one does harm to the neighbor's tree, one may be responsible for the old tort of waste. Again, cooperation is the key, and nothing major should be done without an arborist consultation. Summary In dealing with a tree issue, first find out where the tree lies in relation to the property line. It may be jointly owned, if it falls on both properties. No matter on whose property the tree lies, neighborly cooperation is always the best bet to handle tree issues.

Finally, before making any major change to a tree, removing major branches or roots, consult a qualified arborist. Legal counsel should not be necessary, unless cooperation breaks down, and a judge may well order the neighbors to work together ... thousands of dollars of legal fees later.

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