

**Tree Law: A Further Update
by Dale Alberstone, Esq.**

"Everybody does not see alike. The tree which moves some to tears of joy is in the Eyes of others only a Green thing that stands in the way." (Blake, The Complete Writings of William Blake, 1957, page 793.)

In 2002, I last discussed the laws pertaining to trees and tree trimming for AOA's members. Let me now update that article, bring to your attention the most recent California cases dealing with trees and summarize the basics of tree laws.

When does the owner of real property have the right to cut branches of the adjoining neighbor's trees?

The most recent case concerns the valuation of trees. It was decided by the California Court of Appeal on December 19, 2005 in Metropolitan Water District v. Campus Crusade for Christ. In that case, Metropolitan Water District filed an action for eminent domain against Campus Crusade, which owned the subject land. In response, Campus Crusades sought to recover damages against the District for destruction of various "mature trees." Among other rulings, the Court determined that the amount of damages to be awarded in favor of the landowner was the diminution in value of Campus Crusade's property caused by the cutting of the trees, rather than the cost of their replacement.

In Wilson v. Handley (2002), when Wilson began building a 2-story log home on her property, Handley planted a row of Evergreen trees along the property line. Afraid that the trees would block her view of Mt. Shasta, Wilson filed a lawsuit to require Handley to remove the trees. She relied in part on California's spite fence statute (Civil Code Section 841.4) which declares that any "fence or other structure in the nature of a fence" that unnecessarily exceeds 10 feet in height and is maliciously erected or maintained for the purpose of annoying a neighbor is a private nuisance.

Handley maintained that the trees were neither a fence nor a "structure" and, therefore, not subject to the spite fence statute. The Superior Court sided with Handley, but the Court of Appeal disagreed and overturned the trial court's decision construing the meaning of "structure" in the statute to include a row of trees which are planted in the nature of a fence. Quoting from Merriam-Webster's Collegiate dictionary, the Appellate Court adopted the view that a structure is "something arranged in a definite pattern of organization."

In light of the Wilson opinion, property owners should bear in mind that trees, hedges, bushes and other plantings along their boundary line can potentially fall within California's spite fence law.

Let me now turn to the basic laws in California pertaining to trees and specifically address the question: When does the owner of real property have the right to cut branches of the adjoining neighbor's trees?

Rule No. 1: *Trees with trunks standing wholly upon the land of one owner belong exclusively to him, even though their roots may grow into the land of another.* This means that a tree -- including its branches -- is owned by the person upon whose property the trunk is located. The fact that the roots may grow under the neighbor's property is irrelevant to ownership. (Civil Code Section 833.)

Rule No. 2: *Trees with trunks standing partly on the land of an adjoining owner belong to both landowners.* In other words, two people may own the same tree if the trunk straddles their boundary line. (Civil Code Section 834.)

Rule No. 3: *Where the trunk of a tree is wholly located on the property of another, the adjoining owner may not cut any portion of the tree which is not on his side of the property line.* In other words, the adjoining owner may not cross over the property line to cut any portion of the tree which is not on his side of the boundary. If the adjoining owner violates this rule, and the cutting is otherwise without lawful authority, the person cutting the tree may be liable to the owner of the tree for up to triple the amount of

damages caused by the wrongful cutting. As a corollary to this rule, an adjoining owner cannot enter on the land where a tree is standing to cut it down.

If the damage is accidental or based on an innocent mistaken belief, damages may be limited to double the value of the wrongful cutting. (Civil Code Section 3346.)

Rule No. 4: *A neighbor may ordinarily cut and remove those portions of a tree which overhang his property if the trunk of the tree is located wholly on the property of the next-door owner.* This fourth rule merits some discussion. In many areas of the law, it is illegal for a person to use "self-help" to remedy a situation without first obtaining court approval. This is particularly true in the context of tenants who fail to pay their rent. The landlord is not allowed to physically dispossess the tenant, but must instead obtain a court order through an unlawful detainer proceeding.

In the context of trees, Rule No. 4 says that self-help is permitted in most cases. Generally, a neighbor of the owner of a tree may physically chop off the branches of any tree that cross over his side of the boundary line if the trunk of the tree is entirely on the other side of the line.

However, Rule No. 4 may be limited by the consideration that if the truncation of the overhanging portions of the tree would seriously damage or otherwise destroy the remainder of the tree (such as by killing it), the adjoining owner may be compelled to prove that the nuisance or damage caused to his property outweighs the value of the tree to the owner (Booska v. Patel, 24 CA4th 1786).

Conversely, if the nuisance effect to the neighbor is minimal and cutting the branches would destroy the tree, the neighbor would not be allowed to sever the limbs. If he did, the neighbor could be liable to the owner for substantial damages.

Lawyers reading this article should be aware that older cases suggest that actual damages might have to be suffered before Rule No. 4 is applicable. See Grandona vs. Lovdal 70 C.161.

Rule No. 5: *Where the trunk of a tree stands partly on the land of one owner and partly on the land of an adjoining owner, there is only a limited right to cut any portion of the tree.* The law is not particularly clear whether the owner of land has a right to cut any portion of a tree if the trunk straddles the boundary line of his property and that of an adjoining owner. Early California cases held that the owner has only a qualified right to cut down or trim away the part of the tree which extends onto or over his land without the consent of the other owner. Those cases, which were mostly decided before 1937, involved boundary trees which constituted a windbreak serving to shelter and protect the building or property of the other owner. (See Anderson vs. Weiland 12 C.A.2d 730.) It is unclear whether those cases would be applied today in urban areas where trees serve primarily aesthetic, rather than functional, purposes.

Rule No. 6: *Where an adjoining property owner threatens to violate any of the foregoing rules, the other party has a right to ask the court for an injunction restraining the adjoining owner from improperly cutting his trees.* Under appropriate circumstances, the Superior Court has the power to immediately enjoin any person or property owner from cutting or trimming trees where serious damage is likely to result. In an emergency, an attorney may obtain a restraining order from the court in one or two days. Good, clear color photographs taken of the trees will assist the judge in making a determination as to whether or not to grant the injunction. A professional survey of the property showing the location of the trees relative to the boundary line would also be helpful.

So there you have it – all the basic tree laws which exist in California. What is important to bear in mind is that before cutting someone else's encroaching branches, be sure to weigh the nuisance effect to you versus the damage it will cause to the owner's trees. Our Courts typically apply a "reasonableness" test to the tree trimmer's actions. If found to be unreasonable, the trimmer may be liable for substantial damages.

NOTE TO ATTORNEYS: The statutory laws concerning trees are codified under Civil Code Sections 660, 833, 834 and 3346, C.C.P. Section 733 and 734, Government Code Sections 25635 and 40401 and Penal Code Sections 384a and 622 (which make it a crime to harm trees on another's land). There are only a handful of major tree-cutting cases decided in California, the earliest being decided in 1886 by the California Supreme Court. Lawyers wishing to ascertain their citations may contact the author.

Dale Alberstone is a prominent real estate attorney who has practiced real property and business law in Century City for the past 30 years. He has been appointed to periodically serve as a judge pro tem of the Los Angeles Superior Court and is a former arbitrator for the American Arbitration Association. He also testifies as an expert witness for and against other attorneys who have been accused of legal malpractice.

*Mr. Alberstone has been awarded an **AV** rating from Mardindale-Hubbell. An **AV** rating, registered through Reed Elsevier, reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.*

The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

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