Tree Law in Pennsylvania

Trees benefit us all; they can also bring conflict. This guide provides legal insights on typical neighbor disputes and responsibilities concerning trees near property lines. It reviews roles and responsibilities regarding trees in public rights of way. The guide also addresses the issues of liability for injury as well as the damages a court might award for cutting down or harming someone else's trees.

Introduction

Trees are essential to life in turning carbon dioxide into oxygen, in stemming erosion so that we might have clean water, and in providing habitat. They provide beauty and shade to our surroundings, not to mention maple syrup and root beer.

We are surrounded by trees. The first European settlers of Pennsylvania rightly called this place "Penn's Woods."

Trees can cause dispute when neighbors have differing perspectives as to the benefits and liabilities brought by trees near property lines. So, it is not surprising that laws have developed over the centuries to establish rules and fix responsibilities when trees, people, and objects come into conflict with one another.

The earliest municipal codes created the legal structure by which public roads could be built. Simultaneously, these codes created commissions charged with planting and maintaining shade trees along the public roads to replace the trees lost with construction and provide shade for people and horses travelling the roads.

This guide reviews roles and responsibilities regarding trees in public rights of way. It provides legal insights on typical neighbor disputes and responsibilities concerning trees along property boundaries. The guide also addresses the issues of liability for tree-caused injury as well as the damages a court might award for cutting down or harming someone else's trees.

Challenges presented by trees

What is it about trees that makes examination of neighbor conflicts and liability desirable?

- Trees can be huge—both tall and wide—potentially powerful forces of destruction and annoyance.
- Trees are susceptible to storm damage requiring significant cleanup along with its associated expense.
- Trees drop leaves or needles—some drop pods, fruits, or cones—requiring annual, sometimes ongoing, cleanup.
- Trees spread roots and branches onto and over neighboring properties.
- Trees grow and interfere with surrounding infrastructure, getting into utility lines, uplifting sidewalks, and clogging sewer lines.
- Trees are susceptible to disease that can spread to other properties; some diseases, such as the Dutch Elm Disease and American Chestnut Blight, have the potential to eradicate entire species.

- Trees can harbor pests such as the Spotted Lantern Fly, endangering nearby plants that have significant economic value, vineyard grapes for example.
- Trees die—sometimes slowly and sometimes quickly, sometimes visibly and sometimes invisibly; and in doing so drop branches or sometimes, with no warning, simply fall over, damaging anything in their path—occasionally with catastrophic results.

Yet, because trees enhance our environment and beautify our communities, they are frequently planted proximate to where people live and move about even though the trees have the potential to threaten persons and property. Because of that potential, trees require responsible care and maintenance.

The legal framework

Laws have developed in response to a number of the challenges presented by trees, which can inform approaches to tree maintenance and neighbor relations. Laws have also developed to promote tree planting and to limit liability when people or natural forces interact with trees and harm results. These laws come about through legislative action and through appellate court decisions.

Legislative bodies enact laws. Laws created by state legislatures are called *statutes*. Some pertinent examples are:

- laws creating governmental immunity
- laws granting personal immunity, such as the Recreational Use of Land and Water Act
- laws providing for shade tree commissions

Local municipalities, such as cities, townships, and boroughs, also have legislative bodies that enact laws applicable to the communities over which they have jurisdiction. These laws—called *ordinances*—include, for example:

- ordinances regulating the maintenance of property, including requiring the removal of hazard trees and, in some communities, requiring property owners to maintain trees in the public right of way
- ordinances requiring the planting of trees in conjunction with property development

Courts create *case law* based on the particular facts of a matter and then consistently apply that law in subsequent matters involving the same or similar fact pattern—thus developing a body of law that we call the *common law*. Case law is set forth in the written decisions of courts. The written decisions of appellate courts apply throughout the state, and thus are the most significant. Lawyers are trained to research case law and express opinions based on the principles set forth in court decisions. Some of the legal principles set forth in this guide are derived from actual decisions. Others are the opinions of the author. Case law can change and develop over the course of time as judges re-evaluate legal principles and, in some cases. conclude that the opinions of their predecessors are ill-advised based on changed community standards or simply a mistaken view of what rules best serve the community at a given point in time.

In the development of the common law, courts have created legal concepts that impose liability. We will look in this guide at three of these concepts:

- negligence—acting or failing to act reasonably under the circumstances
- trespass—purposely going onto the property of another and causing harm
- nuisance—creating or allowing activity that unreasonably interferes with another's enjoyment

With this background we'll now turn to specific factual scenarios involving trees.

Neighbor Issues

A tree threatens to fall on a neighbor's property

Disputes between neighbors involving trees are unfortunately quite common. Fear that a neighbor's tree will fall onto one's house during a windstorm may be reasonably

well justified; alternatively, the fear may border on paranoia. Likewise for other fears regarding potential threats from neighboring trees.

To the threatened person the tree is a nuisance—and because the threat is to only one property and not to the public generally, it is classified as a *private nuisance*. A private nuisance is normally resolved in one of two ways: (1) by the neighbors talking to one another and agreeing on how the matter will be resolved—the preferred and certainly the cheapest way to proceed; or (2) by an action in the county court wherein a judge will be asked to hear testimony and decide whether the tree constitutes an unreasonable interference with the enjoyment of one's property. For this latter path, the judge may (or may not) then order the owner of the tree to remove it at the owner's expense or authorize the neighbor to go onto the owner's property and remove the tree and make such additional order as the court might deem to be reasonable.

Within each county there are local magisterial courts that rule on minor claims for damages that someone might have incurred and on summary offenses such as traffic tickets. However, these courts can only award monetary damages and impose fines; they can't issue an order to force action. As such, disputes between neighbors are more likely to be taken to county court.

Sometimes a local municipal ordinance involving the maintenance of private property requires the removal of a tree that threatens a neighbor's property. In such cases the municipality can take action to impose a fine or secure a court order requiring removal of the tree, but it is not compelled to do so. Normally, a local municipality will not inject itself into a dispute involving a private nuisance because the dispute does not involve the public good.

A tree or branch falls on a neighboring property

A tree or a branch of a tree originating on one property falls on the neighboring property.

The first question is who is responsible for cleaning it up? Initially it is it a matter of property maintenance. If a tree or a branch therefrom is on the ground **on your property, it is your mess** to clean up. The same applies to your neighbor even though it is your tree. The friendly act is to ask permission of your neighbor to go onto their property to remove the tree and then to do so. But one should naturally be reluctant to trespass on a neighbor's property, and, in any case, you have no obligation to act.

The second question is whether your neighbor can collect damages from you for the cost of cleanup and the repair of whatever property of the neighbor may have been damaged when the tree fell. The answer depends on whether you were negligent in the maintenance of the tree. To be negligent you must have been aware that the tree was in such condition that it was likely to fall under predictable circumstances and, if it did fall, that it was likely to fall onto the neighbor's property, perhaps to cause the damage that the neighbor experienced. This is called a *hazard tree*. If you were thus aware and took no steps before the tree fell to prevent it from doing so, you were negligent. Being negligent, you are responsible for the neighbor's loss.

The fact that the tree fell is some evidence of negligence. However, the poor condition of the tree may not have been evident to you (root rot for example, or the tree was rotten in its core, but not visibly so). Or the tree fell as the result of an unpredictable force of nature, a so-called *act of God*, and was otherwise healthy. In such cases you are not negligent and thus not responsible for the loss.

A common scenario involves large, mature trees that have started to deteriorate, evidenced by dead branches that occasionally fall, but which otherwise appear to the average homeowner to be healthy. In this scenario, a neighbor, concerned that the tree might fall, might first speak with the owner, pointing out the condition of the tree, and ask that it be taken down. If that doesn't work, the neighbor might hire an arborist to render an opinion on the health of the tree. If the opinion is that the tree is a hazard, they send that to the owner as notice that the tree should be removed. This may lead to the owner, concerned that they may be accused of negligence if at some future date the

tree falls and causes substantial harm, to remove the tree. Or the owner may get a competing opinion, leading to dueling experts. If litigation should ensue, the owner's arborist will be a defendant in that litigation. (Few arborists would want to submit a competing opinion and risk liability.)

The rule is the same if the tree falls into the public right of way. In a case dealing with this scenario, the court held:

> To impose liability upon a landowner for injuries sustained from a falling tree limb, the injured party was required to show not only that the tree constituted a danger to lawful users of the public road, but that the owner of the property on which the tree stood was or should have been cognizant of the deteriorated condition of the tree.

The relevant question, then, is: When should a property owner be "cognizant" of the deteriorated condition of a tree? A distinction in this regard is made between a tree which is next to a road in a rural area, a tree which is next to a road in a suburban area on property with many trees, perhaps a woodland, and a tree in an urban area. In each case the duty of care (i.e., the duty of close examination of the health of a tree) rises with the visibility of the tree and with the degree of likelihood that harm will be caused if the tree falls.

Absolute certainty as to whether there is negligence and thus responsibility to pay for cleanup and repair is only possible with litigation that addresses the facts and circumstances particular to the case. **The time, trouble, and expense of going to court are powerful incentives for neighbors to find an amicable resolution on their own.**

Tree limbs overhang a property line.

Trees have a habit of spreading their limbs over property lines. This condition is so prevalent that courts have been reluctant to provide the invaded property owners with a remedy, presumably because it interferes with the ideal standard of good neighborliness. So, courts, recognizing that the over-hanging limbs are a trespass, held that in such instances the invaded neighbor is permitted to exercise a self-help remedy. Thus, the invaded neighbor may cut off the invading limbs at the property line, but they had no cause of action against the owner of the tree for the cost of removing the trespass. Nor did the owner of the tree have an action against their neighbor for desecrating the tree—perhaps even eventually killing it. This is currently the law in several states bordering Pennsylvania, and **was the law in Pennsylvania until 1994, when the Pennsylvania Supreme Court changed the rules**.

The change stemmed from a property owner who was infuriated because his neighbor cut back the invading limbs of the property owner's hemlock hedge. The property owner sued their neighbor seeking monetary damages for the desecration of the hedge. The owner was denied a recovery by the trial court because the neighbor was only exercising their self-help remedy. When the case got to the Supreme Court, a fresh look was given to the self-help remedy (perhaps in part because it was settled law that the neighbor was within their rights but then had to suffer the expense of the litigation). The Supreme Court then held that because the limbs were a continuing trespass, the neighbor had a "full panoply of remedies." **Not only did they have a right to remove the limbs, but they also had a right to collect the cost of removal in an action against their neighbor.**

If a neighbor has to employ a crane to cut the branches of a tree trespassing on their property in order to avoid trespassing on their neighbor's property, the cost of removal could be significant. However, while any trespassing branch provides the trespassed neighbor with the "full panoply of remedies," **the expense of litigation will generally make legal action a last resort**.

Roots and bamboo

In subsequent cases the Supreme Court has held that invading tree roots from the neighbor's tree also constitute a trespass. And, as with the 1994 decision, this trespass presents the trespassed neighbor with self-help and other remedies. This holding has specific application to situations where monopodial (running) bamboo from a neighbor comes to a property line. The roots from the bamboo invade the neighboring property, and bamboo canes extending 25-30 feet in the air can appear in one

growing season on the invaded neighbor's property. In Pennsylvania there is now **clear authority for the invaded property owner to not only seek an injunction to compel the removal of the neighbor's bamboo as a nuisance, but also to retain a contractor to remove the roots and charge the cost of removal against the neighbor.**

A tree trunk straddles a property line

It is not uncommon for trees to straddle property lines. Trees may be planted next to a property line, and either be accidentally placed across a property line or, in the course of time, grow so the trunk gradually extends over the property line. Trees might also be planted to delineate a property boundary.

Who owns and is responsible for a tree whose trunk straddles a property line?

Neighbors can come to agreement on the maintenance of such trees. For example, the boundary fence is constructed so it comes up to the middle of such a tree and then extends on the other side of the tree in like fashion. But when the straddling tree becomes a hazard tree, particularly in the opinion of one neighbor but not in the view of the other, disputes arise. An appellate court case determining ownership rights and responsibilities in such a situation has not been found as of this writing, but we have identified several possibilities:

- The property owner who planted the tree owns it and has the sole right to remove it.
- Both parties own the tree and either can take it down.
- The owner of the property upon which a majority of the tree trunk is located owns it.
- Both parties own the tree, and neither can take it down without the permission of the other.

Because a trespass would be required for either property owner to fully remove the tree, we suggest that the fourth choice is the only logical one and that the solution to the dispute is uniquely one which a court has to decide.

Injury to Visitors and Liability

A tree or limb falls and injures a visitor to a property.

This is the concern that haunts organizations that maintain public land or private land open to public access. A property owner who invites the public onto its property is obligated to keep the property safe for such visitors. The duty of care of such owner is not just to avoid establishing a condition of the property that increases the risk of harm but to affirmatively prevent such a condition from arising. This heightened duty alarms those (including the government, nonprofits, and private individuals) wishing to open their property to the public for recreational purposes. To ameliorate this situation, the Pennsylvania General Assembly (like many other state legislatures) enacted a statute, the Recreational Use of Land and Water Act ("RULWA"), designed to limit the exposure to liability of such entities. **The statute provides that where property is opened to the public without charge for recreational purposes, and injury is caused by a natural condition of the land, property owners cannot be found liable unless they wantonly caused the injury.**

A useful resource for understanding the statute is WeConservePA's *Guide to Pennsylvania's Recreational Use of Land and Water Act: A Law Limiting the Liability of Those Who Open Their Land to the Public*. To quote from the guide:

> RULWA provides that landowners do not have to keep their land safe for recreational users and have no duty to warn of dangerous conditions, so long as no "charge" (as defined by the Act, which provides certain exceptions described below) is required for entrance. This immunity from liability does not protect landowners who willfully or maliciously fail to warn of dangerous conditions; that is, RULWA immunizes owners only from claims of negligence.

Trees in the Public Right of Way

Trees within the right of way of a public street pose issues peculiar to the responsibilities of joint ownership. Generally speaking, the owners of property abutting a public street own the underlying property to the center of the street. This is true even if the deed to their property describes their ownership as going to the edge of the right of way.

Through a variety of means, the public can acquire a right of way for public travel. When that occurs through municipal or state action, public utilities, such as those providing electric, gas and telephone service to the public, acquire the right to share the right of way with the travelling public, thus assuming certain rights and responsibilities. The actions of these public utilities are governed by regulations imposed by the Pennsylvania Public Utilities Commission (the "PUC").

Trees, whether growing naturally or planted by the municipality, also occupy the public right of way. Statutes giving powers to local municipalities have contained from their very beginning provision for the planting of trees (referred to as "shade trees") in the public right of way. These same statutes:

- prohibit abutting property owners from planting or removing shade trees
- impose on the municipality responsibility for their maintenance
- allow the municipality to charge the cost of the planting and removal of shade trees on the abutting property owners
- provide for the municipality to create a Shade Tree Commission to oversee all of the above

Who controls trees in the public right of way?

Trees in the public right of way are owned by the abutting property owner but are under the control of the municipality. Of course, many municipalities don't choose to exercise that control, so the degree of control varies from one municipality to another. Control by the municipality can extend, for example, to the selection of what trees can be planted in the right of way. Because trees in the public right of way can interfere with the lines of public utilities, those utilities regularly trim shade trees to limit such interference. In many cases this has resulted in terribly misshapen trees through which electric, telephone, and cable lines run. Case law holds that **municipalities cannot control the manner in which public utilities trim shade trees**. Public utilities have the obligation to provide reasonable service and themselves determine what trimming is necessary to accomplish this even if the tree was planted by the municipality and the municipality maintains it. Only the PUC can control the trimming activity of a public utility.

Who is responsible for trees in the right of way?

Falling trees in the ROW

The Commonwealth has the obligation to keep state highways safe for public travel. Municipalities have the same obligation for municipal streets. Thus, if a tree within the public right of way falls causing injury and the public entity having the obligation to keep the right of way safe knew or should have known of the hazardous condition of the tree and the unreasonable danger it posed to the public, the public entity is liable for the injuries caused. The abutting property owner is not liable for damages caused by trees within the public right of way. An exception to this *might exist* if the municipality has by ordinance imposed the maintenance obligation on the abutting property owner and the damages were caused by the failure to maintain. Even then the municipality would be secondarily liable. (It is questionable how enforceable maintenance shifting ordinances are in municipalities that are not home rule since every statutory code governing municipalities includes a specific provision stating that the municipality is responsible for the cost and expenses of caring for shade trees planted in the public right of way.)

Roots in the ROW

The responsibility is reversed if the roots of a tree within the public right of way uplift a sidewalk and create a tripping hazard. Because by statute the maintenance obligation for sidewalks and public walkways within a public right of way falls on the owner of the adjacent property, that **owner is responsible for repairing the sidewalk even though a municipally maintained tree caused the damage**.

Obstruction of view

Abutting property owners have the statutory obligation to keep the right of way free from vegetation growing outside of the right of way that obstructs the view of motorists at intersections. Generally, this would involve branches extending into the right of way.

Damages for Harming Trees

Property owners have a right to collect damages if their trees are destroyed by a trespasser or through the negligence of another. Instances of trees being cut down would almost always be the work of a trespasser. But there are many instances of trees being killed by herbicides carelessly applied on a neighboring property so that they blow over a property line and kill the trees in their path. Large trees being essentially irreplaceable, how do you value them? What damages can a property owner collect for the destruction of their tree or trees? Three methods for assessing damages have been developed:

- if the tree was integral to the landscaping on the property—the cost of replacement
- if the tree was within woodlands on the property—the decline in value of the property
- if the tree was being grown for timber—one of the following:
    - three times the market value of the timber cut or removed if the act is determined to have been deliberate
    - two times the market value of the timber cut or removed if the act is determined to have been negligent, *or*
    - the market value of the timber cut or removed if the defendant is determined to have had a reasonable basis for believing that the land on which the act was committed was theirs or that of the person in whose service or by whose direction the act was done—plus the cost of a survey to determine who owned the land, plus the cost of determining the value of the timber

The first two of these methods have been developed by courts in judicial decisions. Those same courts would determine what constitutes "landscaping" and what constitutes "replacement." Charts exist that assign values to trees depending on their type and size. In most cases these charts greatly overvalue trees in terms of what a court would award using the criteria set forth above and are not admissible in court. The opinions of real estate appraisers, landscape architects, and/or landscape contractors are required to prove damages, depending on whether the method of assessing damages is "replacement" or "market value." Because the determination of whether the removed tree or trees was part of the landscaping on the property or simply a part of a woodland is itself a question to be answered by the court, the testimony of all these "experts" is frequently admitted.

The third method for determining damages is provided by statute from an era when trees were viewed principally as a cash crop which could be stolen and monetized. Proof of damages begins with evidence that the removed tree or trees were to be sold as timber. Argument that a tree *could* have been sold is normally not sufficient unless the tree was an exotic that had a substantial market value. Examples would be walnut or cherry in high demand by furniture makers.

The law does not provide for the emotional insult or ecological loss of trees that are wrongfully removed. Yet these factors can far outweigh the monetary calculations which permitted damage assessment allows. So, in

the case of the loss of trees as in the case of so many other losses that people suffer, resort to the law is an imperfect remedy.

Gilbert P. High, Jr., Esq., authored this guide with editing by Andrew M. Loza.

WeConservePA offers this guide thanks to the generosity of Gilbert P. High, Jr., Esq., and support from the Colcom Foundation, the William Penn Foundation, and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

v. 2022.01.13