



The Equine Esquire

Column editor Patrice Doyle, Attorney at Law, Board of Directors

Getting To the Root of Your Rights—Laws Pertaining to Trees

It is not uncommon for property lines between neighbors to have trees with overhanging branches or tree roots that cross into each other's properties. Most of the time a simple conversation can end with a solution that works for both parties. However, a dispute may arise if there are existing tensions or the damage caused by the tree is extensive. If this is the case, the first question to ask is: Who owns the tree? This is determined by where the trunk is located. Regardless of whether roots and/or branches extend into the property of another, if the trunk is entirely on one property then it belongs to that landowner (Civil Code § 833; however, under Civil Code § 834, if the trunk of a tree stands partly on the land of two adjoining landowner, then both landowners own the tree.) For the purposes of this article, let's assume the trunk is entirely on one parcel. Now that you know who owns the tree, you can then determine the rights of each neighbor.

Generally, the law considers roots, shrubbery, foliage and branches that encroach onto the land of another is a nuisance. A common assumption is that people have an absolute right to remedy the offending branches and/or roots that encroach onto their property. However, the current law does not provide for an absolute right. Instead, the right is based on a test of reasonableness (*Booska v. Patel* (1994) 24 Cal.App.4th 1786.) A landowner's right to remove portions of a tree that encroach on his or her land must be balanced against the obligations to act reasonably toward adjoining landowners and to refrain from causing foreseeable injury to neighboring property.

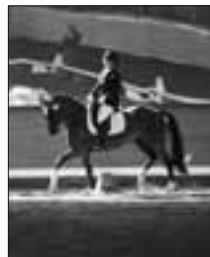
Regarding foliage and/or branches, the owner of the encroached land may abate the nuisance by trimming the overhanging parts of the tree as long as the owner acts reasonably so as not to seriously injure or kill the tree. Although adjoining landowners have a broad right to trim encroaching foliage and branches, it is not the case when it comes to tree roots. If roots encroach under adjacent property, the owner of the offended property can sever the roots, but only if the roots are causing damage and only if done reasonably. Then, the owner of the tree with encroaching roots can be held liable for the actual out-of-pocket expenses incurred as a direct result of the encroachment. However, if the adjoining landowner negligently severs tree roots and seriously injures or kills a tree, the owner of the tree may sue.

What is considered "damage" to a tree? Essentially "damage" to a tree is the compromised health of a tree caused by someone other than its owner. Trimming branches that hang over the property line does not rise to the level of "damage" unless doing so seriously injures the tree. Similarly, if a neighbor uses a chemical to abate encroaching roots, and such application kills the tree, the neighbor will be liable.

Cutting down or killing trees, even unintentionally, can lead to both criminal and civil damages. Under Civil Code § 3346, if someone

damages your tree, you can recover twice the amount of your actual damages, which may include replacement cost (including debris removal and clean up), diminished property value (if replacing the tree is impossible), and out of pocket expenses (including costs for appraisal, debris clean up, yard repair, etc.). Under Code of Civil Procedure § 733, if a landowner cuts foliage and/or branches that are not encroaching and does not have the tree owner's permission to trim, that person may be liable for up to triple the amount of the damage caused by the wrongful conduct. Under Penal Code §§ 384a and 622, it is a criminal offense to harm or remove a tree from someone else's land, which is punishable by a fine of up to \$1,000 and up to six months in jail. Also, it's important to check your community's tree ordinances. The Sonoma County Tree Protection Ordinance can be found in Section 26-88-010(m) of the Zoning Code. A list of protected tree species can be found in the Section 26-02-140. Owners with properties within city limits should check the relevant city ordinances regulating the removal of trees.

When dealing with tree disputes resorting to self-help only escalates the problem and will likely violate both civil and criminal laws. While litigation is a remedy, it takes money, time, and endurance. Neighbors can often get to the root of the issues by having a simple conversation, taking a look at the tree, and coming to a solution.



Patrice Doyle is a senior attorney at Kornblum, Cochran, Erickson & Harbison, L.L.P., and has been an avid horsewoman since childhood. She can be of assistance in guiding you through equine-related legal issues. Contact her at (707) 544-9006 or www.kcehlaw.com.

The above article is provided free and offers general information on the topic of trees. Neither the author nor the publication intend this article to be viewed as rendering legal advice. If legal advice is sought, readers should seek competent legal counsel regarding their particular circumstances.

KCEH
KORNBLUM, COCHRAN, ERICKSON & HARBISON
Attorneys at Law
Kornblum, Cochran, Erickson & Harbison, L.L.P.
A Partnership of Professional Corporation
and an Individual

1388 Sutter Street, Suite 820
San Francisco CA 94109

50 Old Courthouse Square, Suite 601
Santa Rosa CA 95404

Patrice A. Doyle
Attorney at Law

Email: patrice@kcochraneerickson.com
Telephone: (707) 544-9006
Facsimile: (707) 544-8213
Web: www.kcochraneerickson.com