

A Legal View: Overhanging Branches from a Neighbor's Tree Can Be Cut.

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Q: My neighbor's camphor tree has branches that overhang the wall between our properties, and its roots are extending into my yard and damaging both the wall and my patio deck. Can I cut the branches and roots and bill my neighbor?

A: With recent developers positioning houses very close to the property lines to maximize the number of houses in the development, it is more common for branches and roots of a tree to extend over and into the property of the adjacent owner. Although the adjacent owner has rights to cut the intruding branches and use any overhanging product, such as fruit, both the tree's owner and the adjacent owner have certain duties and responsibilities depending upon the particular circumstances.

First, the location of the trunk of the tree determines who owns it, even if the roots grow into the land of another. If the tree is located directly on the boundary line between the properties, then both landowners have common ownership of the tree which affects application of the rules described below. Neither owner has a right to cut down a tree on the property line or cut any part without the consent of the other owner, even if the tree is causing damage.

The most common situation is a tree owned by a neighbor that has branches or roots, or both, that intrude over and into the property of the adjacent landowner. The rights and liabilities of the landowners depends upon the particular circumstances created by the nature and extent of the encroachment.

Both the tree's owner and the adjacent owner should try and agree on a remedy to the encroaching roots before either takes any action. It is always beneficial to document any attempt to have a tree's owner act reasonably to limit encroachments caused by the tree because if a court action is ultimately required, the documentation will demonstrate the good faith of the adjacent landowner to resolve the dispute before resorting to self-help or legal action.

The tree's owner is responsible for any damages that are caused to the adjacent owner from falling branches or roots. So it is in the best interest of the tree's owner to control the growth of the tree so it does not create a source of potential damage to the adjacent landowner.

In the situation where a tree is located entirely on the neighbor's property, and reasonable good faith efforts to resolve the dispute are unsuccessful, then the adjacent landowner has certain rights. For example, the adjacent owner can cut the branches and can collect any product, such as fruit, that overhangs his property. However, the branches can only be cut back to the property line. The adjacent owner cannot enter the neighbor's property and cut the tree down. Such conduct would be viewed as trespass of the neighbor's property and exposed the adjacent

owner to a claim for damages based upon the value of the tree. If the court determines that the cutting down of the tree was willful and malicious, the tree's owner may recover treble damages under Civil Code, section 3346, and Code of Civil Procedure, section 733.

If the branches are so extensive or high that a profession arborist is required to remove the encroachment, the bill can be sent to the owner of the tree, and if payment is refused, a small claims action can be filed to recover damages in the form of the cost of removal.

If the roots of the tree extend onto the property of an adjacent property, then the tree owner is responsible for a trespass and the owner of the adjacent property can cut the roots if they are causing damage. Therefore, while there is an absolute right to cut back encroaching branches, encroaching roots can only be cut if there is evidence of damage to the adjacent property. If the roots are cut when there is no damage evident, then the tree's owner may recover damages if the tree is damaged.

Encroaching branches and roots that cause or threaten damage may constitute a nuisance and a court may agree to issue an injunction against the encroachment. However, in order to obtain the injunction, the court will typically require a showing the branches or roots are causing damage or otherwise interfere with the use and enjoyment of the adjacent landowner's property.

The best course of action when a neighbor's tree is encroaching is to discuss the issue and attempt to work out a solution with the neighbor, and if an agreement can be reached, then the terms should be reduced to writing and signed by both parties. Before using self-help or filing a court action, written communications should be sent to document the nature and extent of the good faith efforts to resolve the dispute. But if all else fails, then the general rules outlined above should be considered, and professional advice obtained, before taking any action.

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