

Limbs from my Neighbor's Tree Overhang my Property... What Can I Do?

Though not strictly a local government issue, this situation is often presented to local government officials.¹

It generally is understood that an owner of realty has a cause of action against any person who has committed a trespass upon his land. What is less generally known is that this cause of action does not require that the landowner allege any actual injury or damage. The harm that is to be remedied is the right to peaceably enjoy full, exclusive use of the property, not the fact that the property is being damaged.

Moreover, a landowner generally has a right not only to the exclusive possession of the surface of his property but also to what lies above and below it. There is a property right in the air space above the land, and this property right can be invaded by overhanging objects, including tree limbs. When tree branches overhang a property line, the aggrieved landowner is not limited to seeking monetary relief for any damage that may have occurred. When tree limbs grow over onto another person's property, there is a trespass. In fact, in the case of tree limbs, there is a continuing trespass occurring by the mere fact of the overhang and the possessor of land is entitled to pursue various remedies, including self-help. With regard to self-help, an aggrieved landowner is entitled to trim the branches back to the property line, and this is true even if the overhanging branches do not damage the property. Also, if the landowner has incurred reasonable expenses in the course of exercising a self-help remedy, he may recoup those expenses from the trespasser.

Who is responsible for removing downed trees during a weather-related emergency?

To begin with, all utilities that fall under the Public Utility Commission's jurisdiction are required to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs . . . as shall be necessary . . ." ² The provisions of this section provide the basis for utility companies to be required to not only respond to fallen trees that damage or threaten utility lines, but also act prospectively to attempt to prevent future damage. Nothing in this section appears to require the utility company to provide for the disposal of a tree after it has addressed the safety or repair issues.

In the case of a public road or highway, responsibility for the maintenance of a road, including the removal of a downed tree, depends on whether the road is owned by the municipality or the

¹ See *Jones v. Wagner*, 624 A.2d 166 (1993), *appeal denied*, 536 Pa. 626 (1993). See also *Koresko v. Farley*, 844 A.2d 607, 617 (Pa. Cmwlth. 2004) ("encroaching tree parts are a trespass which a landowner may remove").

² 66 Pa.C.S. § 1501.

Commonwealth.³ Nevertheless, the Commonwealth Court in *Mylett* speculated that clearing a downed tree may become the municipality's responsibility if the Pennsylvania Department of Transportation (PennDOT) contracted with the municipality for the municipality to perform its maintenance functions. Further, both PennDOT on state-designated highways, and local authorities on highways within a municipality, may require abutting property owners to remove trees or other obstructions that constitute a traffic hazard even if the tree has fallen adjacent to, but not on the road, causing a hazard for visibility.⁴

Where the question of the liability for the removal of a downed tree arises between two parties (for example, the property that the tree stood upon and the property that the tree falls upon), the answer is essentially one that arises out of the law of torts. The Pennsylvania Superior Court has held in the most direct case on point, *Barkeer v. Brown*,⁵ that whether the owner of a tree will have liability for damages resulting from a tree falling on a neighbor's property will essentially be a two part analysis. First, the court will not find liability for the landowner where the tree is part of a natural condition of land by following Section 363 of the Restatement (Second) of Torts, particularly where the properties in question are large and undeveloped. Second, a possessor of land in or adjacent to a developed or residential area is subject to liability for harm caused to others outside of the land by a defect in the condition of a tree thereon, if the exercise of reasonable care by the possessor:

- would have disclosed the defect and the risk involved therein, and
- would have made it reasonably safe by repair or otherwise.⁶

In practice, it is unlikely that a court would find liability for the owner of a tree that falls on a neighboring property unless the owner would have known through the exercise of reasonable care that there was a dangerous defect that would have led to the tree's demise and would have made it reasonably safer through repair. Where an otherwise apparently healthy tree falls during a storm, it is not likely that there would be any basis to find liability against the tree's owner. Realistically, these cases involving landowner disputes appear to be relatively rare, perhaps due to the fact that landowners who suffer actual damage from fallen trees, or simply the inconvenience of disposing of fallen trees, make a claim against their homeowner's insurance to relieve the burden. According to a press release issued by the Pennsylvania Insurance Department, "Homeowners policies should also cover damage from fallen trees or tree limbs. However, consumers should check with their insurer before removing fallen trees, to see if this cost is covered."⁷

³ See e.g., *Mylett v. Adamsky*, 591 A.2d 341, 345 (Pa. Cmwlth. 1991), citing *Medina v. Township of Falls*, 454 A.2d 674 (Pa. Cmwlth. 1983).

⁴ 67 Pa. Code § 212.6(b).

⁵ 534 A.2d 566 (Pa. Super. 1975).

⁶ See *Restatement, Second, Torts*, § 365 (1965); *McCarthy v. Ferrence*, 358 Pa. 485 (1948); see also, *Squicquero v. Ross*, 13 Pa.D.&C.5th 58 (C.P. Lawrence 2010).

⁷ Pennsylvania Department of Insurance, *Insurance Commissioner Offers Tips on Winter Weather Damage to Homes and Autos*, January 20, 2016, <http://www.media.pa.gov/Pages/Insurance-Details.aspx?newsid=161> (September 11, 2020).