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TREE ENCROACHMENTS: GETTING TO THE ROOT OF THE PROBLEM

Trees are great, but they are a never-ending source of falling dead branches, acorns, leaves, insects, sap, rotting fruit, broken driveways, fractured foundations, and bitter disputes between neighbors. Indeed, *“the tree which moves some to tears of joy is in the eyes of others only a green thing that stands in the way.”* – William Blake.

The first issue in a tree dispute is figuring out where, in the eyes of the law, the tree is located. A tree's location is not determined by where the branches are, or how far the roots extend, but rather – as you might suspect – where the tree's trunk comes out of the ground. If the trunk is on or touching the property line between you and your neighbor, each own part of the tree, even if most of the trunk is only on one property. In this situation, neither you nor your neighbor has the right to cut down or harm the tree without the permission of the other. However, each has the right to prune those limbs and roots that are on his property, providing what is done does not seriously harm the tree.

If the tree's trunk is completely on your neighbor's property, and the tree's branches or roots extend into your property, you have the right to prune the branches and remove the roots up to your property line at your own expense. This is one of the few situations in which people can use self-help to fix a problem. There is no need to get a court order to take this action. However, you must not cause serious harm to the tree through your pruning and root removal. You could find yourself in trouble if you become overzealous and cause the tree to become unstable.

Keep in mind that without your neighbor's permission, you do not have the right to trespass on your neighbor's property to prune the branches or roots of your trees – those whose trunks are solely on your property. Even leaning over the fence to reach into your neighbor's property could be considered trespassing. Ordinarily, friendly neighbors don't care about trespassing onto the other's property. But, if you are thinking that this article applies to your problems with your neighbor, trespassing may be a major issue for you.

If your neighbor has a fruit tree with branches that extend onto your property, you might be tempted to harvest the fruit for your own enjoyment. However, the law says that the fruit on the tree's branches still belongs to the tree's owner, regardless of where those branches reach. But your neighbor does not have the right to trespass onto your property to pick his fruit. If you don't agree to allow your neighbor access to pick the fruit, your neighbor would need a court order to come onto your land. In time, however, this dilemma solves itself when the fruit falls from the branches and becomes simple tree debris. Once the fruit hits the ground, it loses its value, and you are free to dispose of it without your neighbor's permission.

While the law does not require you to do so, the best way to handle a tree encroachment problem is to talk pleasantly with your neighbor. This is not only the courteous thing to do, but it also can head off future legal issues by making sure you both understand any problems and can agree on a solution. However, if you cannot reach an agreement with your neighbor, make sure you have a clear understanding of where your situation fits within the law before taking the problem into your own hands.