

Going out on a limb requires knowledge of tree law

A county attorney and as a private Attorney I have received many calls through the years by one neighbor concerning damages from or problems with trees or bushes that grow or hang over from an adjoining neighbor's property. Recently I have received several calls asking for a copy of an article concerning this topic that was run a couple of years ago. I thought it may be helpful to again explain the law in Kentucky concerning these situations.



JUSTIN VEST

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By a case arising out of Kenton County that was decided by the Kentucky Court of Appeals in 1985, Kentucky has adopted what is known as the "Massachusetts' Rule" governing problems with trees between adjoining property owners. This rule imposes very limited liability versus what is known as the "California

Rule" which imposes much more liability upon the owner of the land where the tree is growing.

Under the "Massachusetts' Rule" as adopted in Kentucky, a property owner is not

liable for, and is not required to remove, extensions of limbs

and roots over and into the adjoining property of others. The theory behind the rule is that a property owner should be able to grow all the trees he wants on his own property regardless of how much they extend over onto another's property.

However, although the neighbor

cannot force the owner to cut back the trees, the neighbor has the right to cut off intruding limbs or roots on his own property. For example, if a property owner's trees were hanging over your driveway or your house causing problems or the roots from the tree were bucking your sidewalk or driveway, then you would be permitted to cut the roots and the limbs back to the property line if necessary.

However, the law is different if we are dealing with a dead or damaged tree that is likely to fall and cause injury. You could still cut back the dead or damaged tree to the property line, but you could also file a suit for negligence against the adjoining property owner for injuries caused by the dead or damaged tree. And you could also file a lawsuit on the theory of nuisance requesting that the

adjoining property owner be required to remove the dead or damaged portions of the tree.

The theory behind the difference in the law as to alive or dead trees is that it would be futile to require the neighbor to remove a portion of a dead and dangerous tree back to the property line while leaving the hazard of a large portion of the total tree to remain in a threatening position.

Although under Kentucky law as explained above, you have the right to trim back the limbs and roots from a neighbor's tree that extend over onto your property without the neighbor's consent, I would certainly suggest contacting the neighbor, explaining the problems and trying to work together to eliminate the problems.

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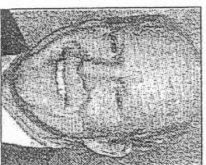
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Landowners have rights and responsibilities

As an attorney, I have received many calls through the years by one neighbor concerning problems with trees, bushes or other vegetation that grow or hang over from an adjoining neighbor's property. I thought it may be helpful to explain the law in Kentucky concerning these situations especially given the effects the extreme weather conditions this past winter had on our trees.

In 1985, Kentucky has adopted what is known as the "Massachusetts' Rule" governing problems with trees between adjoining property owners.

Simply, a property owner is not liable to a neighbor for



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tree limbs and roots that extend into the neighbor's property from a tree that is alive.

Moreover, the owner is not required to remove limbs and roots that extend over and into the

adjoining property of others. The theory behind the rule is that a property owner should be able to grow all the trees he wants on his own property without repercussion.

Although the neighbor cannot force the owner to cut

back the trees, the neighbor has the right to cut off intruding limbs or roots on his own property. For example, if a neighbor's trees were hanging over your driveway or your house causing problems or the roots from the tree were buckling your sidewalk or driveway, then you would be permitted to cut the roots and the limbs back to the property line. Nevertheless, if you exceed past the property line,

you can be liable for civil damages caused by your actions. On the other hand, if the tree is dead and likely to fall and cause injury, a neighbor can file a nuisance suit requesting the adjoining property owner be required to re-

move the dead or damaged portions of the tree. The theory behind this is that it would be futile to require the neighbor to remove a portion of a dead tree back to the property line while leaving the hazard of a large portion of the total tree to remain in a threatening position. If the tree has already fallen, you can also file suit for the damages caused by the fallen tree.

In most cases, the best starting point to resolving a problem would be contacting the neighbor, explaining the problems and trying to work together to eliminate the problems.

There may be several issues involved including for

example where exactly the property line is actually located or if the property is owned by the government. If in doubt or an issue arises, it is always best to consult an attorney to assist and advise you with your specific problem because the law in this area is still being developed.

I hope this information is interesting and helpful. If you have any topics you would like to have covered, please contact my office by e-mail at campbellcoatty@gmail.com, by phone at 491-7700 or by regular mail addressed to 319 York Street, Newport, KY 41071.

Steven J. Franzen is Campbell County Attorney.

Rights of adjoining landowners

Last week I did an article dealing with burning and the requirements and legal issues. Since tree trimming and brush clearing go hand in hand with the spring clean up which we all so look forward to, I thought this week we could talk about some issues of tree trimming and tree maintenance.

As a private attorney, I have received calls through the years by one neighbor concerning damages from or problems with trees or bushes that grow or hang over from an adjoining neighbor's property.

With the season upon us and with prior issues having been raised, I thought it may be helpful to again explain the law in Kentucky concerning these situations.

By a case arising out of Kenton County that was decided by the Kentucky Court of Appeals in 1985, Kentucky has adopted what is known as the "Massachusetts' Rule" governing problems with trees between adjoining property owners.

This rule imposes very limited liability versus what is known as the "California Rule" which imposes much more liability upon the owner of the land where the tree is growing.

Under the "Massachusetts' Rule" as adopted in Kentucky, a property owner is not liable for, and is not required to remove extensions of limbs and roots over and into the adjoining property of others.

The theory behind the rule is that a property owner should be able to grow all the trees he wants on his own property regardless of how much they extend over onto another's property.

However, although the neighbor cannot force the owner to cut back the trees, the neighbor has the right to cut off intruding limbs



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or roots on his own property.

The law is different if we are dealing with a dead or damaged tree that is likely to fall and cause injury.

You could still cut back the dead or damaged tree to the property line, but you could also file a suit for negligence against the

adjoining property owner for injuries caused by the dead or damaged tree and you could also file a law suit on the theory of nuisance requesting that the adjoining property owner be required to remove the dead or damaged portions of the tree.

The theory behind the difference in the law as to alive or dead trees is that it would be futile to require the neighbor to remove a portion of a dead and dangerous tree back to the property line while leaving the hazard of a large portion of the total tree to remain in a threatening position.

Although under Kentucky law as explained above, you have the right to trim back the limbs and roots from a neighbor's tree that extend over onto your property without the neighbor's consent, I would certainly suggest contacting the neighbor, explaining the problems and trying to work together.

If you have any topics you would like to have covered in this column, please mail to me at 331 York Street, Newport, Kentucky 41071 or fax to me at 491-5932 or e-mail jadcca@fuse.net.

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