Topic:
LIABILITY (LAW);
Location:
LIABILITY, LEGAL;
Scope:
Court Cases;

OLR RESEARCH REPORT

The Connecticut General Assembly

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TO:

FROM: Heather Gunas, Research Analyst

RE: State Statutory Liability for Landowners

You asked for a description of other state statutes making a property owner liable for damage done to another property by trees, shrubs, roots, or similar vegetation on his land.

Although we did a fifty state computer search, we found no statutes directly on point. Thus, a landowner's liability in this area appears to be governed by common law principles. Under these principles, liability is typically imposed on trees, vegetation, and bushes that are planted but not on those that are naturally occurring.

According to Prosser and Keeton, The Law of Torts 390 (5th ed. 1984), under the traditional common law rule a landowner owes no duty to those outside of his premises to remedy conditions of purely natural origin on his land, even if the conditions are highly dangerous or inconvenient to his neighbors. This rule is reflected in the Restatement (Second) of Torts, Sections 363 and 840.

But, if the landowner created hazardous conditions by artificially placing trees, shrubs, roots, or similar vegetation on his land, he may be held liable for any resulting damage. More specifically, Restatement (Second) of Torts, Section 839 indicates that a landowner may be liable for a nuisance if the following criteria are met: (1)

the nuisance is caused while the landowner has an abatable artificial condition, (2) the owner knew or should have known of the nuisance and any related unreasonable risks, (3) it exists without the consent of those affected by it, and (4) after a reasonable opportunity, the owner has failed to take reasonable steps to abate the condition or to protect his neighbors from it.

The decision in *Greifield v. Gibraltar Fire & Marine Ins. Co.*, 199 Miss 175 (1946), was based on the above principles; the court found liability for encroaching vegetation if it had been planted by the previous or current owner, but found no liability for naturally growing vegetation.

The traditional rule of nonliability for natural conditions was considered a necessity when our nation was a rural land. According to 54 A.L.R. (Fourth) 530, 537, the trend in urban areas is to replace the traditional rule with a duty of reasonable care to eliminate the dangers of unsound trees. This is required even if the trees are a natural condition.

For instance, in *Barker v. Brown*, 340 A2d 566 (1975), the court observed that urban land has a different purpose than rural land, and its unique character demands certain responsibilities. Essentially, a tree growing in an urban or residential area does not have the same natural relation to surrounding land as a tree in a rural setting. Therefore, it is no longer considered a natural object when a city or residential area develops around it. The court decided the potential danger and damages from a fallen tree outweighs the effort needed to inspect and secure trees in developed or residential areas. 54 A.L.R. (Fourth) 530, Section 3.

Another possible exception to the rule of nonliabilty for natural conditions is liability for damage caused by rotten trees near a public highway. To protect travelers, a landowner must inspect his trees and remove the rotten or diseased ones. Restatement (Second) of Torts, Section 363, comment e.

Connecticut case law reflects this distinction between liability from natural versus artificial conditions. Generally, an owner is not liable for the natural growth or condition of his land. (There is an exception for trees bordering urban highways.) Cases decided on this principle have involved “injuries to person or property from the natural flow of water, naturally growing trees and herbage, mosquitoes breeding in natural waters, stench arising from natural causes, and injuries from stones and boulders.” However, Connecticut law may recognize liability for damage caused by altering natural conditions. Connecticut Law of Torts, Section 53.

HG:tjo