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APPENDIX THIRTY TWO

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Property Dispute Resolution

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Liability for tree roots and branches

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Property Disputes specialist
Mike Hansom examines liability for tree roots and branches.

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Liability for tree roots and branches

There is little doubt that trees enhance the enjoyment of our gardens and support wildlife. However, the modern built-up environment has fierce competition for space. As trees grow, encroaching roots and overhanging branches extend beyond the legal boundary into neighbouring property.

Sometimes, this causes inconvenience, damage or even injury. So, here are some helpful tips to help avoid problems with legal liability for tree roots and branches.

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PTO →

Duty of care for trees

You owe a duty to your neighbours to take reasonable care to prevent your trees from causing damage or personal injury. As a prudent landowner, you should routinely inspect the trees near your boundaries. Deal promptly with potential problems such as dead or damaged branches.

Liability for damage caused by trees

You may be liable for damage caused by your tree(s) to your neighbours' buildings and other structures. A typical example is damage to foundations from encroaching tree roots. **You may be compelled through court action to 'abate the nuisance' and pay compensation if proven.** Abating the nuisance might include the removal of the tree or other major work to it. Most home insurance covers this type of risk. However, you *must* notify your insurer as soon as you know of a potential claim.

Can I cut back roots and branches?

If planted on your land, the tree is yours, but any part extending over the boundary line is an encroachment. Irrespective of how long these branches and roots have been there, they acquire no legal right to remain on your neighbour's side. The general common law position is that a neighbour can cut back branches or roots on their side up to the boundary line.

Usually, a neighbour cannot compel you as the tree owner to take action, although they can undertake the work at their own cost. However, there are exceptions, such as when there is a risk of injury or damage to property.

Communication with your neighbour

Anyone pruning a neighbour's tree is under a duty to take reasonable care. As a result, they may be liable for causing any undue damage or if the works result in the tree becoming unstable.

I always recommend a policy of amicable and clear communication between neighbours *before* undertaking tree work. And unless the job is straightforward, consider instructing a tree surgeon. But always check the tree surgeon carries indemnity insurance.

Beware Tree Preservation Orders (TPO) and Conservation Areas

The position is different if a Tree Preservation Order (TPO) is in place. Unless specific exemptions apply, it's a criminal offence carrying a fine of up to £20,000 to cut down, top, lop, uproot, wilfully damage or wilfully destroy such a tree, without first obtaining permission from the local planning authority. Permission is also required if you live in a Conservation Area. You will find [substantial information on the government's website concerning trees in Conservation Areas or subject to a Tree Preservation Order.](#)

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