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Falling Trees Damaging Others' Property

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Issue

Under Connecticut law, who is responsible if a tree (including a tree on state property) falls and damages another person's property?

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

In Connecticut, the law concerning liability for damage by falling trees is largely a matter of common law (case law) rather than statute. Generally, the plaintiffs in such lawsuits bring claims under the legal theories of negligence or nuisance. Whether a court would find a landowner liable depends on various factors and requires a fact-specific inquiry in any given case.

Generally, courts have found property owners are not liable if an otherwise healthy tree falls due to an "act of God" (such as a hurricane). By contrast, in some circumstances, a landowner could be held liable if the tree's condition (such as rot) posed an unreasonable danger and the owner knew or should have known of that condition and failed to eliminate the danger. There are also certain circumstances in which the court may find that the municipality or state is liable for damages from trees falling, depending on the location of the tree. The following provides a broad overview of the relevant law.

Liability

Private Property Owner

There are relatively few cases in Connecticut involving the liability of a private landowner whose tree falls and damages neighboring private property. In contrast to some earlier cases, two recent Superior Court cases concluded that, based on the Restatement (Second) of Torts, there is generally no liability between private landowners for damage caused by natural conditions on the land, including damage caused by a falling tree. For a discussion of these cases, see OLR Report 2017-R-0221. These cases are not binding on other courts, and we were unable to find any Connecticut Appellate or Supreme Court cases directly addressing a private landowner's liability for a tree falling onto neighboring private property.

There are more cases concerning liability for injuries or damages caused by a tree or branch striking a pedestrian or a car passing on a public road. In such a situation, the landowner may be liable if he or she was aware of a dangerous condition and did not remedy it. But the landowner may avoid liability if the tree, although on his or her property, was within the exclusive authority of a municipal tree warden (see below).

Municipal Liability

With limited exceptions, the law gives municipal tree wardens authority over trees on private property if the trees' roots or branches extend onto or over any public roads or grounds (CGS § 23-59). The state Supreme Court has held that this law gives tree wardens exclusive control of such trees.

There are several cases in which plaintiffs sued municipalities for personal injury or property damage caused by falling trees near roads that struck passing cars or pedestrians. For example, the plaintiff may allege that (1) the tree warden breached his or her duty to inspect a potentially hazardous tree after being warned of the tree's condition and (2) the failure to do so caused the plaintiff's injuries or property damage. The law on potential municipal liability often turns on whether the municipal official in question negligently performed a "discretionary" act, in which case the municipality is entitled to governmental immunity from liability (with some exceptions), or a "ministerial" act, in which case the town could be held liable. Generally, a discretionary act requires the exercise of judgment, while a ministerial act is performed in a prescribed manner without the exercise of judgment or discretion. For an example, see this Appellate Court opinion from 2012 (*Wisniewski v. Town of Darien*, 135 Conn. App. 364 (2012)).

State Liability

In certain circumstances, the state could be liable for damage from trees falling on state property. Due to the doctrine of sovereign immunity, a party seeking to hold the state liable for damages must generally bring a claim through the claim's commissioner office. The claims commissioner can dismiss the claim; order payment of a just claim in an amount up to $20,000; recommend to the legislature the payment of a just claim in a greater amount; or authorize a suit against the state when it is just and equitable and the claim presents an issue of law or fact under which the state, if it were a private person, could be liable (CGS §§ 4-158(a) and 4-160(a)). For more information on the claims process, see OLR Report 2017-R-0298.

Cases involving potential state liability for falling trees often involve trees along highways or other roads under the jurisdiction of the state Department of Transportation. For an example, see this unpublished Superior Court opinion from 1994 (*Toomey v. State* (Super. Court, Feb. 17, 1994)). (The case was first presented to the claims commissioner, who authorized the claimant to sue the state.)

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