



PENNSYLVANIANS
FOR MODERN COURTS



Your Rights in Civil Court Matters

Presenters: Larry Walker, Esq. and Mike O'Donnell, Esq.
Cozen O'Connor



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As we begin....

- Should you have technical issues please email us at staff@pmconline.org.
- If you lose your computer connection, you may call one of the numbers on the Zoom link you received.
- Tonight's presenters are discussing general legal topics. They are not giving legal advice. Should you wish specific legal advice, please consult an attorney of your choice.
- This program is being recorded. The recording will be available at www.pmconline.org, click on "Resources".



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30 Years of Fighting for Fair Courts in Pennsylvania

Pennsylvanians for Modern Courts is the **only statewide nonprofit, nonpartisan organization** dedicated to ensuring that all Pennsylvanians can come to our courts with confidence that they will be heard by qualified, fair, and impartial judges.

We advocate for judicial reforms, educate Pennsylvanian about our courts and how to navigate them, about our judiciary and hold Appellate Court Candidate Forums





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The Work We Do

- Advocacy:
 - Judicial Selection Reform
 - Judicial Discipline Reform
 - Bail Hearing Reform
- Civic Education about the Judiciary
 - **Judicial Election Forums and programs – 2023 is an Election Year**
 - Continuing Legal and Judicial Education: ethics courses for judges and lawyers
 - The Media, The Courts & Counsel™
 - **PMC in the Community™**: public education about the courts





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CELEBRATING 30 YEARS



PMC in the Community™

PMC partners with many community partners and legal professionals to cohost and present PMC Shares™ Workshops. Below are just a few scheduled in

FEBRUARY

2/15 PMC in the Community – **Paul Titus Criminal Court** – Philadelphia Main Library – David Sonenshein, Esq. & Judge Shultz - 6:00pm (Virtual)

MARCH

3/8 PMC in the Community – **Landlord Tenant** – Chester County Library – 6:00pm
3/23 PMC in the Community – **Protection From Abuse**- Scott Township Library – Craig C Stephens – 6:00pm (Hybrid)

TO REGISTER FOR THESE EVENTS GO TO OUR WEBSITE WWW.PMCONLINE.ORG



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AGENDA

1. Structure of Our Pennsylvania Court System
2. Civil Litigation 101
3. What do I do about my neighbor's tree?
4. Breach of Contract/Automobile Accident/Consumer Rights/Insurance Disputes



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Structure of Our Pennsylvania Court System



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Pennsylvania State Court System



Supreme
Court

Superior
Court

Commonwealth
Court

Common Pleas Courts

Municipal Court/Magisterial
District Courts

CIVIC EDUCATION & ENGAGEMENT

EQUAL ACCESS TO JUSTICE

JUDICIAL MODERNIZATION & REFORM



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www.pmconline.org

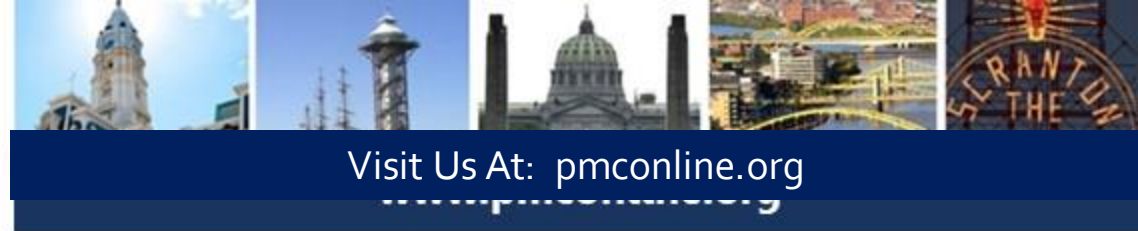
Pennsylvania Supreme Court



- Ultimate authority on matters brought before the lower courts
- Review is discretionary in many cases
- Review is mandatory for limited categories of cases: interpretation of state constitution, cases involving the death penalty, etc.
- Kings Bench Power- power of extraordinary jurisdiction



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Supreme Court



Quick facts:

- Founded 1722 - oldest court in the United States
- Highest Appellate Court in PA
- 7 Justices
- Term: 10 years
 - Method: Partisan election

President Judge Debra Todd

McLinko v. Commonwealth – 2022

Upheld constitutionality of mail-in voting, reversed Commonwealth Court decision

Commonwealth v. Barr – 2021

Smell of marijuana alone is not probable cause for a search



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PA Supreme Court has Supervisory Activities

- Administrative Office of Pennsylvania Courts
 - Education of Judges
 - Budgeting of court system
- Judicial Conduct Board
- Committees, Boards and Advisory Groups of Supreme Court – 8 different rules committees made up of judges and lawyers
- Regulates Practice of Law, including attorney admission and discipline



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Intermediate Appellate Courts



- **Superior Court** hears civil and criminal appeals from Court of Common Pleas, including matters involving families, automatic right of appeal
- **Commonwealth Court** hears original actions brought by and against the Commonwealth, appeals from decisions made by state agencies and some appeals from the Courts of Common Pleas



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Commonwealth Court



Quick facts:

- Founded 1968
- One of two intermediate appellate courts
- Unique to Pennsylvania
- Only hears state government and government agency cases
- Term: 10 years
- 9 judges
 - Method: Partisan election

President Judge Renee Cohn Jubelirer

General Election 2022 – Count the undated mail-in ballots

Objections to Nomination Papers of State Level Minor Political Party Candidates and Independent Candidates of

Political Bodies – General Election 2022

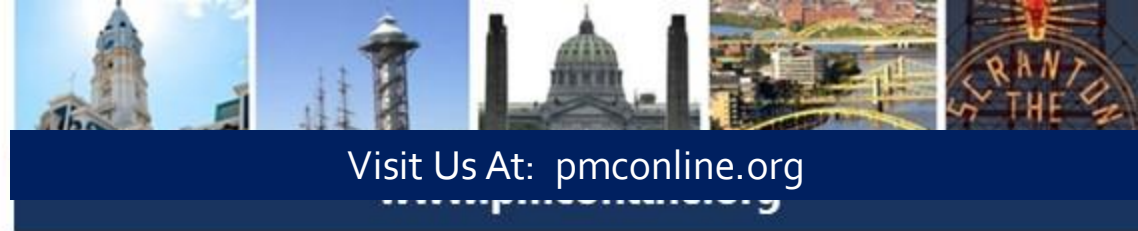
CIVIC EDUCATION & ENGAGEMENT

EQUAL ACCESS TO JUSTICE

JUDICIAL MODERNIZATION & REFORM



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Superior Court



Quick facts:

- Founded 1895
- One of two intermediate appellate courts
- Hears criminal and civil cases
- 15 judges - 1 vacancy
- Term: 10 years
- Method: Partisan election

**President Judge
Jack Panella**

Commonwealth v. Ruffin - 2022

Partial obstruction of vehicle registration plate is violation of law and police can stop vehicle. Suppression motion denied

Kohlman v. Grane Healthcare – 2022, found a nursing home arbitration agreement unconscionable

1. individual was physically and mentally incompetent upon signing;
2. Document was not read in the entirety to her to ensure she understood, nor was Vincent's family consulted, nor was indiv. provided with a copy so someone else could read it to her;
3. Requiring nursing home residents to pay 50% of an arbitrator's fee was so unreasonable that it was per se against public policy and inherently unenforceable.



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Entry Level Courts



Court of Common Pleas

- Hears appeals from the minor courts “de novo” and appeals not exclusively assigned to another court.
- Adjudicates matters involving children and families.
- Holds civil and criminal judge and jury trials.
- Handles disputes and issues involving more than \$12,000.

Municipal or Magisterial District Court

- Civil actions less than \$12,000
- Summary and minor offenses, landlord-tenant disputes, criminal cases except for murder and voluntary manslaughter
- Issue arrest warrants, hold preliminary hearings, fix and accept bail, and resolve some civil and criminal cases
- Non-traffic summary offenses (disorderly conduct)
- Traffic offenses
- Not a court of record – need to specifically request court reporter or ability to record
- No Jury Trials



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Civil Litigation 101



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Why would I need to go to the Courts?

Civil Suit

Between two litigants (plaintiff and defendant)

Determine whether defendant is liable for injury or harm done to plaintiff

Plaintiff must have preponderance of evidence

No right to an attorney*

Criminal Case

Between prosecutor, representing the state and its citizenry (not the victim), and defendant

Determine whether defendant has broken the law

Prosecutor must prove guilt beyond reasonable doubt

Right to an attorney

* For guardianship, there may be a right to an attorney



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First Steps

- Gather factual information to support your position
- General understanding of the law:
 - Is there a contract/agreement?
 - Written or unwritten?
 - Has it been broken/breached?
 - Is there a duty owed?
 - Is there a hazard for which there is notice?
 - Is there a trespass?
 - Has the duty been broken?
- Who is involved? Who are the parties?
- What are the damages?
 - Personal injuries? Property harm?





Examples of Factual Documentation



Contract Action Documents:

Documents explaining the agreement between you and the other side (like signed agreements, contracts, letters, or emails)

- Communication between you and the other side (like emails, letters, or messages)
- Documents to show the issue (like photographs, diagrams, invoices, estimates, contracts, canceled checks, or credit card statements)

Negligence Action Documents:

- Communication between you and the other side (like letters, emails, or messages)
- Documents to show the issue (photographs, diagrams, invoices, estimates, contracts, and canceled checks). These might include:
 - Bills or records from licensed health care providers (hospitals, doctors, or therapists).
 - Bills for drugs, medical appliances, or equipment
 - Affidavits (sworn statements) from workers or doctors explaining how much they will charge for their services. You can get an affidavit form from the court after you submit your case.
 - Affidavits (sworn statements) from workers about the value of the damaged property. You can get an affidavit form from the court.
 - Estimates and the cost of a repair or damaged property
 - An earnings report from your employer showing time lost from work or lost pay
 - An official weather or traffic signal report



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Filing a complaint



- Determine which court the complaint should be filed in –
 - Municipal/Magisterial District Court?
 - Common Pleas Court?
 - What location?
 - Where property is located?
 - Where individual is located?
 - Where agreement was signed?
 - Where agreement says complaint should be filed?
 - Where occurrence or harm occurred?



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Is there a form? Or forms?

- Cover sheet – varies by court
- <https://www.pacourts.us/forms/for-the-public>

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

For Prothonotary Use Only:

Docket No:

TIME STAMP

County

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A	Commencement of Action: <input type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking		
	Lead Plaintiff's Name:		Lead Defendant's Name:
	Are money damages requested? <input type="checkbox"/> Yes <input type="checkbox"/> No		Dollar Amount Requested: <input type="checkbox"/> within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits
	Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No		Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: _____ <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)			
SECTION B	Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your PRIMARY CASE . If you are making more than one type of claim, check the one that you consider most important.		
	TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	CIVIL APPEALS Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
	MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations <input type="checkbox"/> Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____
	PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		

Updated 1/1/2011



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Is there a form? Or forms?

- Complaint/Statement of Claim
 - Original signature
 - Attach documents
 - Filing costs
 - Service costs
- Hire an attorney?
 - Recommendation/Referral
 - Pro Bono
 - Pro Se/ Self Representation
 - In Forma Pauperis

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF _____



CIVIL COMPLAINT

Mag. Dist. No: _____
MDJ Name: _____
Address: _____
Telephone: _____

	AMOUNT	DATE PAID
FILING COSTS	\$ _____	_____
POSTAGE	\$ _____	_____
SERVICE COSTS	\$ _____	_____
CONSTABLE ED.	\$ _____	_____
TOTAL	\$ _____	_____

PLAINTIFF: _____ NAME and ADDRESS _____
DEFENDANT: _____ V. _____ NAME and ADDRESS _____

Docket No: _____
Case Filed: _____

Pa.R.Civ.P.M.D.J. 206 sets forth those costs recoverable by the prevailing party.

To The Defendant: The above named plaintiff(s) asks judgment against you for \$ _____ together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

I, _____ verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

(Signature of Plaintiff or Authorized Agent)

The plaintiff's attorney shall file an entry of appearance with the magisterial district court pursuant to Pa.R.Civ.P.M.D.J. 207.1

If you intend to enter a defense to this complaint, you should notify this office immediately at the above telephone number. You must appear at the hearing and present your defense. Unless you do, judgment may be entered against you by default.

If you have a claim against the plaintiff which is within the magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

AOPC 308A

1



FREE INTERPRETER
www.pacourts.us/language-rights



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Statement of Claim- Municipal/MDJ

- <https://www.courts.phila.gov/pdf/municipal/forms/small-claims/statement-of-claim-form-and-instructions.pdf>
- Can file in person or by mail (but include self addressed stamped envelope)
- Also need to complete Affidavit of Nonmilitary form (unless suing a business or organization)

COMMONWEALTH OF PENNSYLVANIA
The Philadelphia Municipal Court
1339 Chestnut Street, Philadelphia, PA 19107
Patrick F. Dugan, President Judge

Typed By:	Approved:	Code:	Court Costs:	SC	
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STATEMENT OF CLAIM

Plaintiff(s)		Defendant(s)	
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<input type="checkbox"/> Motor Vehicle case—Defendant License Information:		Date of Accident:	License Plate No.
	Defendant—Operator No.		Owner—Operator No.

TO THE DEFENDANT: The above named plaintiff(s) ask judgment in this Court against you for \$ plus court costs upon the following claim:	Principal Amount
	\$
	Interest at %
	From:
	Attorney's Fee
	\$
	Other
	\$
	Total:
	\$

COUNSEL FOR PLAINTIFF:		PHONE No:
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COMMONWEALTH OF PENNSYLVANIA COUNTY OF PHILADELPHIA SS: I, DEPOSE AND SAY THAT THE FACTS SET FORTH ARE TRUE AND CORRECT AND ACKNOWLEDGE THAT I AM SUBJECT TO THE PENALTIES OF 18 P.S. 4904 RELATING THE UNSWORN FALSIFICATION TO AUTHORITIES. _____ SIGNATURE PLAINTIFF/ATTORNEY	SUMMONS TO THE DEFENDANT: YOU ARE HEREBY ORDERED TO APPEAR AT A HEARING SCHEDULED AS FOLLOWS: LOCATION (SITO) COURTROOM , SIXTH FLOOR 1339 CHESTNUT STREET	CITATION: AL DEMANDADO POR LA PRESENTE, USTED ESTA DIRIJIDO A PRESENTARSE A LA SIGUIENTE DATE: (FECHA) TIME: (HORA)
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NOTICE TO THE DEFENDANT: YOU HAVE BEEN SUED IN COURT.PLEASE SEE ATTACHED NOTICE.	NOTA IMPORTANTE PARA EL ACUSADO: USTED HA SIDO DEMANDO EN CORTE. POR FAVOR MIRA PAPELE ESCRITA.
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I am sued, what do I do?



- Make sure you **attend the hearing** on the notice you received from the court or file with the court a **request to reschedule** (also known as a continuance)
 - Write a letter indicating case number and your contact information

If you do not show up in court or request a continuance, the other side will automatically win. They will get a Default Judgment.

- The court will send you a letter saying the date the decision was made, and the amount you have to pay. This will also create a lien on any property you own, including your home. This means that the other side may be able to claim your property, including by taking money from your bank account. A judge might also ask the other side to prove you owe them money. If the judge decides that the other side did not have enough evidence, they might schedule a new hearing.



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Responses to a Lawsuit

- **Negotiate a lower amount or use a mediator to find a compromise.** Both sides can negotiate to come to an agreement before going to court. You can also use a mediator who can help you discuss and negotiate. On the day of your hearing, the court may be able to provide you with a mediator with the Dispute Resolution Unit.

Good Shepherd Mediation - <https://www.phillymediators.org/>

Just Mediation - <https://www.justmediationpgh.org/>





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Responses to a Lawsuit



- **Go to court and challenge the case.**
 - **Hire an attorney** – Recommendation, local bar association, possible nonprofit
 - **Call your insurance company**
 - **Represent Yourself** If you want to defend yourself, you can ask court staff to move your case so that a judge will make the decision. You should be ready to explain your side of the story to the judge. It is the job of the company or the person suing you to prove their case with evidence. If you have proof that you should not have to pay the other side, make sure to bring it to court and bring copies to give to the other side. Proof can include contracts, bills, letters, canceled checks, and receipts.



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Responses to a Lawsuit



- **Submit your own lawsuit.** You can respond to a case by starting one of your own. If your new lawsuit involves the same people as the one against you, your lawsuit will be called a counterclaim. A counterclaim is your way of saying “I don’t owe you money. You owe me money.” You should be able to prove that you are right or at least that the other side is not right.



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WHAT DO I DO ABOUT MY NEIGHBOR'S TREE?



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Possible Scenarios



1. Healthy Trees Encroaching On/Over Property Line
2. Unhealthy Trees Presenting a Hazard
3. Property Damage From Neighboring Trees (when the healthy or unhealthy tree falls over and causes an injury).



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Healthy Trees Encroaching On/Over Property Line



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Healthy Trees Encroaching On/Over Property Line

- The seminal case in Pennsylvania addressing trees that encroach on or over the property is *Jones v. Wagner*, 425 Pa. Super. 102 (1993), Cert. denied, 563 Pa. 626 (1993).
- Plaintiff and defendant were adjoining landowners with a fence separating their properties.
- Plaintiff was the owner of a row of hemlock trees that were situated on its property, but with the branches extending over the boundary line separating the two properties.
- The neighbor whose property was encroached upon, cut the branches of the trees extending over the property line.
- Plaintiff sought replacement value of each of the 26 trees in the approximate amount of \$31,000.
- The plaintiff contended that the neighbor was not entitled to “self-help” because they suffered no appreciable damage by the overhanging branches.



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On appeal, the Superior Court of Pennsylvania held:

...There is no question that a branch overhanging a landowner's property line is a technical trespass which he may alleviate by exercising self-help, as did appellees. They were entitled to trim the encroaching branches without regard to the degree of physical harm done to their property. The redressable harm caused by the trees is that of the trespass onto appellees' property, not physical damage done to their land.



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Healthy Trees Encroaching On/Over Property Line

- The court next addressed whether, in addition to self help, a property owner may have judicial remedies.
- After addressing the law and other jurisdictions, the court held:

Based on the reasoning above, we conclude that Pennsylvania law affords a full panoply of remedies to the landowner whose property is encroached by overreaching branches or tree limbs.

First, an agreed landowner is entitled to exercise a self-help remedy by either trimming or lopping off the branches to the extent his property is encroached. Second, if the landowner has incurred reasonable expenses in the course of exercising a self-help remedy, he may recoup those expenses from the trespasser. Third, he may, on a trespass theory, seek equitable relief compelling the trespassing neighbor to remove the trees to the extent of the encroachment and seek appropriate incidental consequential damages. We emphasize that Pennsylvania law requires no showing of physical harm or damage to the land before a possessor of land can enforce his right to freely enjoy unencumbered and exclusive use of property he rightfully possesses .

- Id. at 112.



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Healthy Trees Encroaching On/Over Property Line

- In *Jones v. Wagner*, the court also addressed, in a footnote, the situation where a landowner does not complain about an otherwise healthy tree that encroaches upon his lands, but fails to complain it.
- “However, if an action is available without a showing of damage, a landowner has no reason to complain if a neighbor’s tree causes damage after the prescriptive period has run.”
- The issue being addressed by the court involved whether limbs and roots encroaching upon another’s land for a period of more than 21 years can constitute a prescriptive easement.
- That question was later rejected in *Koresko v. Farley*, 844 A. 2d 607 (Pa. Commonwealth Court 2004), Cert. denied 57 A. 2d 680 (Pa. 2004).



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Healthy Trees Encroaching On/Over Property Line

What to do?

As set forth in *Jones v. Wagner*, you have options:

- You can trim the trees encroaching over your property line.
 - *Be careful*— don't cross into your neighbor's property while cutting the limbs or roots, or you may be liable for trespass yourself;
- If you choose to hire a contractor to remove the branches, you have the option to file a lawsuit to recoup those expenses from the neighboring landowner.
 - *Be careful*— don't damage the portion of the tree on the neighbor's property
- You may, on a trespass theory, file a lawsuit and seek equitable relief compelling the neighboring property owner to remove the trees encroaching over the property line, including incidental or consequential damages (this does not include attorney's fees).



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Healthy Trees Encroaching On/Over Property Line

Where is the line?

- In *Wolfinger v. Moates*, 7 Pa. D.&C 4th 220 (Pa. Com. Pl. 1990), the court addressed the specific issue of trees that grow on the boundary line.
- The court held that it is unlawful “for any owner or owners of any undivided interest in timber within this Commonwealth to cut or to remove, or to cause to be cut or removed, from the said land, any timber trees without first obtaining the written consent of all co-tenants in said premises.”
- Thus, while you are legally permitted to cut the limbs from the tree that grow or encroach upon your land, you cannot cut down the trunk of a tree that grows upon the property line.
- The Court went further and addressed the issue of how much of the trunk or portion of the tree does encroach upon the property line before it can be cut.
- “Whether any portion of the trunk of the elm tree grows on plaintiff’s property... the law... is determined by the exact location of the trunk of the tree at the point it emerges from the ground.”
- Thus, the court held, that as long as the face of the tree coming out of the ground is either on the property line or on the neighbor’s property, the trunk of the tree may not be cut down.



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Be Cautious

- Trimming branches and roots can cause damage and, possibly, kill the tree encroaching across the property line.
- If you conduct trimming the tree causes it to die or fall over (because you cut the roots) you could be sued.
- This is why its always best to talk to your neighbor.
- Self-help could be a last resort and is the least safe route to take.
- If you plan to take self-help consider hiring a tree care professional.
- Make sure you know where your property line is located to avoid trespassing.



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Unhealthy Trees Presenting a Hazard



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Unhealthy Trees Presenting a Hazard

- When your neighbor is maintaining a dead, dying or unhealthy tree (that is not encroaching across the property line), your options are limited because there is no right of self-help.
- *Jones v. Wagner* (above), is limited to roots and branches encroaching upon the property line.
- You may not trespass upon your neighbor's property to cut down the tree.
- Although not required to give notice, you should write to your neighbor via certified and regular mail, about the condition of the tree.
 - Your letter should include a detailed description of the condition you are complaining about (dead, sick or dying tree) and, if possible a photograph of the conditions.
 - KEEP A COPY OF THAT LETTER!
- If the neighbor does not remedy the condition, send letters on a periodic (but not harassing) basis.
- Such note letters create a record that the neighbor was aware of the problem and did not exercise "reasonable care" in the face of a potentially hazardous circumstance. (We will discuss the proof necessary to win a lawsuit later but this letter is Exhibit A!")



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Unhealthy Trees Presenting a Hazard

- Put all of your “notice” to the tree owner in writing
 - **Text, email, letters, etc.**
 - **KEEP COPIES**
- Photographs and videos
 - Take photos regularly
 - Tree conditions change over time and photos can show a tree declining in health
 - Include photos when contacting the owner to “show” them your concerns



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Property Damage From a Neighboring Tree



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PROPERTY DAMAGE

- Generally, an owner of rural property is not under an obligation to continually inspect the trees on his/her land, however an urban property owner may have such obligation.
 - The Superior Court in Barker v. Brown, 340 A.2d 566 (Pa. Super. 1975) explained this distinction: “[T]he relatively minor expenditures in time and money that it will take to inspect and secure trees in a developed or residential area is not large when compared with the increased danger and potential for damages represented by the fall of such a tree”
- The Barker Court gave us the following test for non-rural property owners:
 - “We hold the possessor of land in or adjacent to a developed or residential area is subject to liability for harm caused to others outside of the land by a defect in the condition of a tree thereon, if the exercise of reasonable care by the possessor:
 - (a) would have disclosed the defect and the risk involved therein, and
 - (b) would have made it reasonably safe by repair or otherwise”
- At a minimum there must be a visual inspection: “The reasonable care standard encompasses, at least, a duty to make a visual inspection.” Barker, *infra*.



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Causes of Action

- In the event a sick, dying or dead tree falls from your neighbor's property and onto your property, you have the ability to bring a civil action against your neighbor for claims sounding in:
 1. Negligence; and
 2. Trespass.



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NEGLIGENCE

The ordinary principles of negligence apply in cases involving property damage or personal injuries caused by falling trees.

The elements of the negligence claim are as follows: Duty; Breach; Causation; and Damages

- By definition, negligence is a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances.



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Unhealthy Trees Presenting a Hazard

- Courts look to see whether the tree owner acted “reasonably” under the circumstances.
 - What is reasonable can depend on: the location of the property
 - Is the tree located in a rural or urban area?
 - What is reasonable can be depend on: the appearance of the tree
 - Was there visible decay/damage to the tree that should be obvious to a property owner?
 - What is reasonable can depend on: how the tree-owner responds to being placed on notice of a hazardous tree
 - Did they make any effort to inspect the tree? Did they hire someone to evaluate its health?



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Property Damage

- The behavior usually consists of an affirmative action, but can also be the failure to act when there is some duty to act.
- Thus, to prove negligence in a case involving a sick, dying or dead tree that falls over causing property damage, it is necessary upon the plaintiff to prove that the event may have been **foreseeable**, i.e., that the condition of the tree made it such that the owner of the tree, if acting in a reasonable manner, knew or should have known that the tree presented a hazard to the neighboring lands.
- The issue of foreseeability addresses whether your neighbors should have reasonably known or foreseen that the tree may cause harm to your land.
- This is why documenting the condition of the tree and writing letters to your neighbor is critically important – it creates the foreseeability necessary to win a negligence case against you neighboring land owner.
- As distinguished from the sick, dying or dead tree that your neighbor knew or should have known may present harm to you or your property, otherwise healthy trees that fall over during storms do not give rise to a negligence and/or trespass claim.
- Acts of God; (The Act of God defense does not apply if the result was foreseeable) . Thus, the Act of God defense is not viable when a dead tree falls over during a 100 year storm. The storm may have been a remarkable event but a dead tree falling over during such a storm is hardly surprising.
- Criminal, negligent or intentional acts by third parties. (Contractors cutting tree limbs that cause damage result in liability to the contractor, not your neighbor. As a general rule, we are not liable for the conduct of third parties and independent contractors.



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PROPERTY DAMAGE

- The question is ultimately whether the owner had notice of the unhealthy condition of the tree, or whether they should have recognized the tree was unhealthy
- If the tree is located in an urban area the owner will have a higher obligation to inspect the tree
- Regardless of the location of the tree if the owner is given notice by a third party that the tree is unhealthy that owner is obligated to respond reasonably
 - This could include further inspection, retaining tree care experts, or cutting the tree down



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- Could the condition of the tree have been discovered before it fell?
- Above soil problems: thinning canopy, dropping branches, decay
- Below soil problems: root rot



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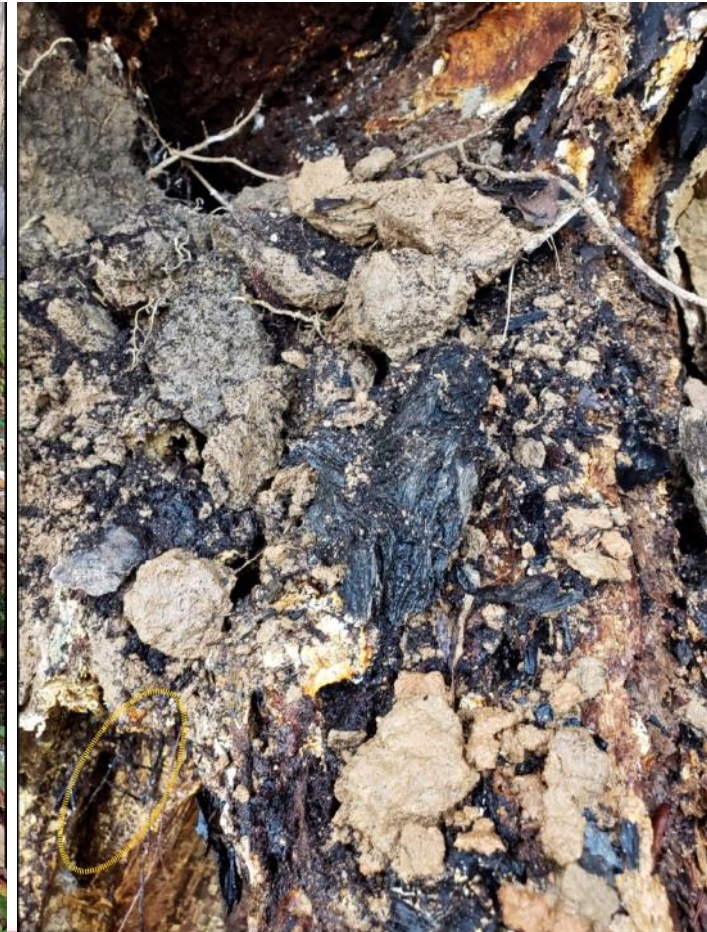
- Above soil problems: “thinning canopy”





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- Below soil root rot:





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TRESPASS

- A property owner has a cause of action in trespass if:
 - 1) any person interferes with;
 - 2) the owner's right to possession or enjoyment of his real property
- An important distinction between negligence and trespass is there is no need for physical harm to prove trespass – it is enough that there was an interference with the owner's enjoyment of the property



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Statute of Limitations

- Two (2) years from the date of the injury
 - Regardless of whether you are pursuing a negligence or trespass claim (or both) you **MUST** file your lawsuit within two (2) years from the date the injury occurred or was discovered. 42 Pa. C.S.A. Sec. 5524.
- If, for example, your neighbor's tree falls onto your home on February 1, 2023, but you do not file a lawsuit until February 2, 2025, your case will be dismissed and you are forever barred from filing suit.



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Who owns the tree? If it is the town, county, or Commonwealth it can impact your claim

- There are special considerations when a hazardous tree is owned by a governmental body.
- Sovereign Immunity may apply
 - The Sovereign Immunity Act and Political Subdivision Tort Claims Act
- The Commonwealth must have had actual or constructive notice of the tree's dangerous condition. Com. Dept. of Transp. v. Patton, 686 A.2d 1302 (Pa. 1997).



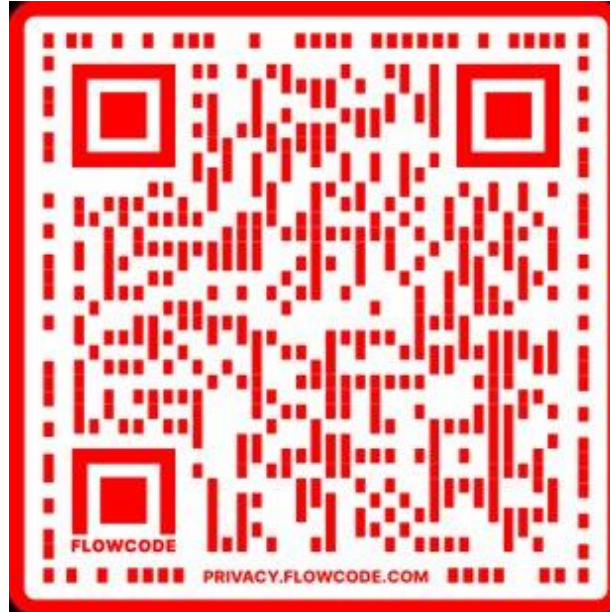
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Breach of Contract
Automobile Accidents
Consumer Rights
Insurance Disputes



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QUESTIONS?