

Tree Inspections and statute and common law applied to trees

AY/602/3958

UNIT GUIDE 2023-24

LO 3 Understand how aspects of common law are applied to trees.

3.1. Interpret common law in a scenario containing any four issues from

- Overhanging branches
- Trespassing roots
- Dangerous trees
- Poisonous trees

Common law is the body of law that is established by judges and is based on precedent and custom. When a problem arises, attorneys review earlier cases that have been decided and see whether they apply to the current issue.

Common law is subject to change when new cases are determined and cases proceed to appeal. Legislation (Acts of Parliament) that supersedes common law can also "trump" it.

A tree does not "break the law" by itself, but it may become legal if there is a chance that it may harm or kill someone or cause property damage.

This is so that anyone who gets hurt can file a lawsuit against the tree's owner to get damages. The victim would have to demonstrate:

- That there is a party who owes them a duty of care to ensure they are not exposed to risks;
- that this person was careless, in violation of a statutory requirement, and violated their duty of care.
- The victim needs to be able to demonstrate causation, or that the harm was brought on by the negligence.
- Additionally, the victim would have to prove that they had been harmed.

After that, the victim may file a damages claim for common law negligence. Three categories of damages exist:

1. General damages: payment for suffering, anguish, and a decline in life quality
2. Special damages for past losses: reimbursement for the injury's upfront costs
3. Special damages for future losses: payment for future care expenses as well as future earnings loss or earning potential loss.

1. Looming branches

Overhanging branches give rise to several legal difficulties.

1. They may impede safe movement by overhanging the highway.
2. They could obstruct light from nearby properties.
3. A neighbour might find them bothersome.

Table 2 is attached for comparison's sake. It is an exact replica of HSE's "Reducing risk, protecting people," with the addition of a category for falling and fallen trees.

Cause of death	Annual risk	Basis of risk and source
Cancer	1 in 387	England & Wales 1999
Injury and poisoning	1 in 3,137	UK 1999
All types of accidents and other external causes	1 in 4,064	UK 1999
All forms of road accident	1 in 16,800	UK 1999
Lung cancer from radon in dwellings	1 in 29,000	England 1996
Gas incident (fire, explosion, or carbon monoxide poisoning)	1 in 1,510,000	GB 1994/95 – 1998/99
From trees	1 in 10,000,000 or less if high wind incidents are excluded	This study
From lightning	1 in 18,700,000	England & Wales 1995-99

Table 2 (adapted from HSE (2001)) shows the annual risk of death for the whole population for different causes.

Regarding non-fatal injuries, the number of A&E visits linked to tree strikes (approximately 55 annually on average) is minuscule when juxtaposed with the roughly 2.9 million A&E visits in the UK each year that are related to leisure activities. There are numerous more incidences involving items like wheelie bins (2,200), children's swings (10,900), and footballs (262,000).

The public's risk of both fatal and non-fatal injuries in the UK has been measured in relation to falling trees or tree components. It has been established that the annual risk to any one person is incredibly low. It falls comfortably within the HSE's tolerance of risk framework's "broadly acceptable region."

https://ntsgroup.org.uk/wp-content/uploads/2016/06/NTSG-Report-1_Trees-and-the-Risk-of-Harm.pdf

Overhanging Branches

Although a tree's overhanging branches are considered a nuisance rather than trespass, the Earl of Lonsdale v. Nelson case [1823], which addressed trespass rather than nuisance, may have been an odd starting point. Nevertheless, the judge stated during the case's hearing that annoyances could be reduced by the person experiencing them without informing the person causing them. This was obviously not the case when the overhang was onto a public road or came from a tree whose owner regularly took care of their own trees. Additionally, the judge said that allowing branches to overhang into a nearby property was a "most unequivocal act of negligence." However, one must proceed with caution because classifying overhang as irresponsible is a grey area that borders on what may be deemed appropriate in this particular circumstance. Rather, as the judge explained in her earlier remarks, this kind of overhang is called a nuisance. Building on this decision, the Rylands v. Fletcher [1868] case established the precedent for foreseeability, even though it had nothing to do with trees. As a result, boundary trees will inevitably encroach onto neighbouring land via their branching crowns and roots; therefore, the tree owner must promptly recognise this and take steps to mitigate the nuisance caused by their encroachment. If not, the owner of the tree would be held accountable if something "mischievous" happened (including just because the overhang interferes with the neighbours' enjoyment of his or her land).

Can I trim branches that dangle over my head?

Sure, as long as it is done without invading the other person's territory. If the task does not include entering the neighbour's land or garden, it is also acceptable to scale the tree to complete it. Keep in mind that trees in conservation areas or those covered by Tree Preservation Orders (TPOs) need the local government's prior approval.

Do I need to give my neighbour notice or permission before cutting off the overhanging branches?

No. Permission is not required since your activities fall within the category of "abating a nuisance." Permission would only be needed if you needed access to their land in order to carry out the work. In a similar vein, trees in conservation areas or with TPOs need permission from the local government beforehand.

If this results in harm to a neighbour's tree, am I responsible?

Indeed. You would be deemed negligent in legal terms. Occasionally, disease, a shift in the tree's equilibrium, or a change in wind loading might cause a tree to topple over as a result of limb loss. For these reasons, it is critical to use a qualified arborist or tree surgeon who can limit danger and assume responsibility for the task (be sure to verify if they have public liability insurance before hiring them).

Case Study:

Date: 13/04/2024 Location: Handsworth Public Park, Holly Rd, Handsworth, Birmingham B20 2BY



Handsworth Public Park

Target #

People walking on footpath / grass area

Within $1.5 \times H_t$ —target is within striking distance if the trunk or root system of the tree fails and there are dead or brittle branches that could shatter and fly from the failed tree

Occupancy:

3. Frequent—the target zone is occupied for a large portion of the day or week

Not practical to move the target

Previous failure

The tree is in poor condition

Falling branches

Split in trunk section

$\frac{3}{4}$ hollow decay in trunk section

Wind exposure: partial

Overextended branch

Unbalanced crown

Vigor: low

(An assessment of overall tree health. Classify as low, normal, or high:

Low—tree is weak, growing slowly, and/or under stress.

Normal—tree has average Vigor for its species and the site conditions.

High—tree is growing well and appears to be free of significant health stress factors)

Recommendation:

Advance Level 3 inspection on the decay in the trunk section

Sonic Tomography required

Observing the overextended branch on the footpath

Level 3 inspection should be done within 3 month

Attention to the stormy weather now is required

Trespassing Roots

Is it possible to remove roots encroaching on my land?

Indeed. The same rights and obligations apply to you as when you cut off branches. Additionally, if the tree is inside a conservation area or has a TPO, prior approval from the local government is needed.

What happens if I cut the roots and the tree topples over?

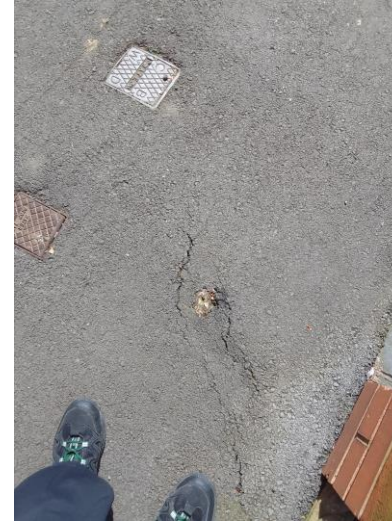
You have the same obligations as if you were to cut off branches in addition to rights. For instance, you would be responsible for any harm your neighbours' tree causes if you were to chop through its roots and cause it to become weaker and topple over. Therefore, it is crucial to take precautions before chopping any tree roots and to consult a specialist for any task larger than a little project.

If removed with appropriate care, roots can be removed to the boundary in the same way as overhanging branches. According to the ruling in *Lemmon v. Webb* [1894], a neighbour may prune back trees without giving the tree owner notice as long as he may do so without going onto the owner's land. A similar decision was made in the *McCombe v. Read* [1955] case, where the judge stated that a neighbour might, in fact, remove any root intrusion back to their boundary. A similar decision was made in the *McCombe v. Read* [1955] case, where the judge stated that a neighbour might, in fact, remove any root intrusion back to their boundary. In addition, the judge decided that in order for the trees to be considered to be causing a nuisance once more, the defendant who owned them had to make sure that their roots did not invade the land of his neighbour. An action for nuisance will arise "if trees encroach, whether by branches or roots, and cause damage," the judge in *Davey v. Harrow Corp.* [1957] declared shortly after, but only insofar as the apparent nuisance was reasonably recognisable (for trees existing close to boundaries, such an issue almost certainly is). This precedent can be seen in a more recent case, *Perrin & Anor v. Northampton Borough Council & Ors* [2006], where it was decided that a neighbour might cut down boughs or grub roots without notice and that "root encroachment into a neighbouring property was similar to bough encroachment."

Case Study:

Most tree roots are found in the upper 60 centimetres of the soil, which for street trees implies that the pavement is barely covered by them. Protruding tree roots. Some paths are tree-lined but, as the roots grow, they can become trip hazards.

It is your legal responsibility as a local highway authority—typically a county council or national park authority—to document and maintain public rights of way. A section of land that is freely utilised by the public for activities such as walking, running, transporting, and other activities without requiring permission is known as a public highway, which also includes footpaths. People who use wheelchairs, mobility scooters, powered wheelchairs, and walkers or runners can use pavements. Usually, a public pavement can be located alongside a road. Although enterprises owned by landowners may also be responsible for their upkeep, local councils are typically in charge of them.



Kitwell Lane 71 / 91, B32 4DA, Bartley Green

The entire left Kitwell Lane, coming from Frankley, looks like that when street trees were planted. The pavement's tarmac is being lifted and broken up by the tree roots that are spreading beneath it. There is a trip hazard here. The pavement surface is flexible and naturally conforms to the roots; but, when it breaks, water can seep in and the cycle of freezing and thawing will accelerate the tarmac's disintegration. Most likely, Kier Highway Maintenance comes out and put tarmac again on this surface. During winter time, when ice and snow covers the pathway, it becomes very slippery and a trip and/or fall hazard.

Dangerous trees

Originating from *Giles v. Walker* [1890] and *Noble v. Harrison* [1926], which was the judge's conclusion in the latter case that "I see no ground for holding that the owner is to become an insurer of nature, or that default is to be imputed to him until it appears, or would appear upon proper inspection, that nature can no longer be relied upon," and a few more recent cases, starting with *Brown v. Harrison* [1947] and *Lambourn v. London Brick Co Ltd* [1950], both of which reached a similar conclusion to *Noble v. Harrison* [1926], which established the foundation for current court cases. These contemporary instances also follow the precedent set by *Goldman v. Hargrave* (1967) and *Leakey v. National Trust* (1980), the latter of which drew guidance from the former. However, more research into earlier examples is necessary before moving on to more recent cases. According to the *Rylands v. Fletcher* [1868] ruling, a landowner is required to acknowledge that he or she has a duty of care to those who use nearby parcels of land for their own reasons. This obligation includes making sure any trees on the land they control that may have an impact on surrounding properties are as safe as is reasonably reasonable. This opinion was expressed by the judge in *Donoghue v. Stevenson* [1932], where it was stated that a tree owner had a duty of care to "avoid acts or omissions" that could reasonably be expected to injure a neighbour if they were allowed to continue. Naturally, a successful argument will only be made in situations where a flaw is clearly visible to a reasonable and responsible landowner, as was acknowledged in the 1940 *Kent v. Marquis of Bristol* decision. In this case, it was decided that if the elm tree in question had been examined, it would have been obvious that the cavity on the structure was dangerous and that it ought to have been fixed before

another event happened. Furthermore, the tree must be made safe as soon as the landowner learns of the problem (or can fairly be assumed to have already known about it) in cases where a tree becomes damaged due to vandalism or trespassing. This was the situation in *Sedleigh-Denfield v. O'Callaghan* [1940], where the local government entered a property without permission and worked without the landowner's knowledge to ensure a ditch was drained correctly by erecting a grate and culvert. However, due to incorrect grate installation, which resulted in the culvert being often obstructed, such efforts proved to be futile. This resulted in frequent flooding of the land, which finally spread to an adjacent property and caused significant damage. The defendant, whose land was the source of the flooding, argued that he was unaware of the work being done by the local government, but the judge decided that the defendant should be held accountable for the damages since he had continued to permit the nuisance, which should have been easily identifiable. This implies that proper action must be taken as soon as one becomes aware of a threat associated with a risky tree, which has ramifications for the arboricultural sector.

Case Study:

Kitwell Lane / Wood Lane roundabout opposite bus stop X22, 23

The tree stands on a busy street during peak hours connecting Bartley Green with Frankley Service M4. Busses, X22, 23, X21, 202, 002 commute regularly.





The tree shows signs of decay, fungus, and structural fault making it hazardous so close to the street. The tree has outgrown its location and is excessively damaging / obstructing the Highway. The tree has outgrown its location and is damaging surrounding structures like the metal fence. Kier on behalf of Birmingham City Council will remove the tree and promise to plant a new tree in a near location. A new footway will be created.



Poisonous trees

It is acknowledged that certain problems may arise when trees bearing toxic fruit, foliage, or both are permitted to overhang over adjacent land, providing animals with access to graze on the toxic materials that are both connected to and removed from the trees. Without a doubt, the recognised precedent regarding overhanging branches is applicable, especially in light of the *Rylands v. Fletcher* [1868] decision, which concerned the defendant's reservoir's water leak rather than trees. It was said that the neighbour who brought something onto his property (that was not there naturally), harmless to others as long as it stays on his property but he knows will be mischievous if it gets on his neighbours, should be required to make good the damage that results if he is unable to keep it contained. In this view, there is no problem as long as a dangerous tree is kept inside the grower's property boundaries (duty of care). Following this decision, all instances that are relevant to yew trees were limited to the late 1800s and early 1900s. In *Wilson v. Newbury* [1871,] horses belonging to the claimant (Wilson) perished after eating yew tree leaves on Newbury's property. Nevertheless, it was discovered that the foliage that had been consumed had been trimmed from the tree. Since there was no proof of who had done so or that Newbury knew that the foliage had been clipped, the claim was denied.

Following this decision, all similar cases have been limited to the late 1800s and early 1900s and have a specific connection to yew trees. Horses held by the claimant (Wilson) in *Wilson v. Newbury* [1871,] perished after ingesting yew tree foliage on Newbury's property. However, it was discovered that the foliage that had been consumed had been trimmed from the tree. The claim was denied since it was unclear who had done so and there was no proof that Newbury knew that the foliage had been clipped.

Case Study: Case Benn Curran-Nicholls / Manchester City Council 2023

In June 2022, Benn Curran-Nicholls and his family relocated from Australia to Didsbury. Benn had severe autism and an intellectual impairment; he developed a regular schedule that included walks in the neighbourhood parks.

Benn enjoyed climbing the yew tree in Fletcher Moss Park when he went for a walk with his father on September 18.09.22 in the morning. Benn consumed some of the leaves and berries from the yew tree. Benn's father did nothing since he was unaware that yew tree berries and leaves are deadly. It is interesting to note that the neighbourhood manager for environmental health at Manchester City Council did not inform me, based on his evidence, that yew trees are toxic. At approximately 6 p.m. that day, Benn unexpectedly passed out. He was transported by emergency ambulance to the Royal Manchester Children's Hospital, where he passed away early on September 19, 2022. Although yew tree poisoning in humans was uncommon, toxicological evidence indicated that some cases had been documented.

Manchester City Council contacted the UKHSA after Benn passed away to seek public health messages about the incident, including risk assessment and yew tree berry be taken into account.

Manchester City Council was notified of the UKHSA ruling by email on September 22.09.22.

The coroner concerns:

I learned that Manchester City Council is currently doing a risk assessment of the yew trees in its parks, which will include an evaluation of the risks associated with climbing, among other things, from the Neighbourhood Manager's testimony. The results of these evaluations were not yet known.

In my opinion, there is no need to evaluate that danger given the yew tree's extreme toxicity, which can have lethal effects. In these parks, there might be additional trees and plants whose parts, if consumed, could cause poisoning. I have heard that the identification of any such plants and trees was not part of the assessment. There had been no thought put into posting signs alerting people to the yew tree's deadly nature and the dangers of consuming its berries and leaves. Neither at the park entrances nor at the individual trees.

Furthermore, there had been no thought given to putting notices alerting people to the fact that, for example, some of the plants and trees are poisonous and might cause severe illness or even death if eaten. These notices should have been posted generally rather than just for yew trees. Once more, not at the park entrances or scattered

around. Similar conditions do carry a danger of fatality, but educating the public will undoubtedly lessen that risk. Maybe especially for a child whose carer would have this kind of knowledge.

UK Health Security Agency (UKHSA) response:

Regarding Ref. 2023-0480, Report on Regulation 28 to Avert Future Deaths

We appreciate you sending the report on preventing future deaths to the UK Health Security Agency (UKHSA) on November 27, 2023.

The UKHSA has thought about and responded to the concerns expressed in the report; the details are provided below. Two issues of concern were brought up in the Regulation 28 report, according to UKHSA. Only "Matter One" is addressed in this response; Manchester City Council is responsible for "Matter Two."

Response to Matter One (issuing communications to the public with respect to not ingesting yew tree berries, leaves, or bark):

Greater Manchester Police got in touch with Manchester City Council to ask that appropriate messaging be sent out to the public. On September 26, 2023, Manchester City Council emailed UKHSA to ask that it take into consideration any communications with its colleagues in the Council who work in public health and environmental health. On September 27, 2023, a complete risk assessment was conducted by UKHSA public health specialists, environmental public health scientists, and colleagues in environmental health and public health at Manchester City Council. The same day, an email outlining the agreed-upon stance was sent. Following further extensive talks with important specialists from both organisations, UKHSA and Manchester City Council jointly decided not to release public health messaging. The advice given to Manchester City Council at the time has been evaluated by UKHSA. For the reasons listed below, UKHSA continues to believe that it was the right choice to refrain from releasing public health advisories on plant consumption in general or yew tree in particular. The statement that the decision "was not thoroughly and fully thought through" is respectfully rejected by UKHSA. Based on the evaluation of risk and the utility and impact of any messaging, the decision was made proportionately.

Evaluation of the danger

It is extremely uncommon for the ingestion of plants to cause death. Six deaths in England and Wales are reported to have resulted from plant ingestion, according to the Office of National Statistics' most recent data (2016). Four of these deaths were suicides, one ingestion was unintentional, and the other case's cause of death was not known. Medical literature describes yew tree poisoning (*Taxus baccata* intoxication) as a known poison that can be fatal. 22 recorded case studies between 1960 and August 2016 are reported in one publication. Out of the 22 cases, one ingestion occurred accidentally, and 15 were suicides. It was unclear if the six cases that remained were suicides or accidents. Following our earlier recommendation to the Council, we continue to believe that there is a higher risk of harm than benefit from proactively advising the public not to consume plants, particularly yew trees, as there is a chance that these messages will have unintended consequences that could lead to people self-harming as a means of suicide. Given the rarity of the condition and the inability to issue messaging with clear instructions for the public, public health communication is regarded as inappropriate and may result in unexpected consequences.

Table 1. Number of deaths from toxic effect of ingested plants, by underlying cause, England and Wales, deaths registered in 2016^{1,2,3}

ICD-10 Code	Underlying cause	Deaths
		2016
X49	Accidental poisoning by and exposure to other and unspecified chemicals and noxious substances	1
X69	Intentional self-poisoning by and exposure to other and unspecified chemicals and noxious substances	4
Y19	Poisoning by and exposure to other and unspecified chemicals and noxious substances, undetermined intent	1

1 Cause of death was defined using the International Classification of Diseases, Tenth Revision (ICD-10). Deaths were selected where the secondary cause of death was the toxic effect of other ingested (parts of) plant(s) (ICD-10 code T62.2).

2 Figures for England and Wales include deaths of non-residents.

3 Figures are for deaths registered, rather than deaths occurring in 2016. Due to the length of time it takes to complete a coroner's inquest, it can take months or even years for a death to be registered. More details can be found on the ONS website: www.ons.gov.uk/ons/guide-method/user-guidance/health-and-life-events/impact-of-registration-delays-on-mortality-statistics/index.html.

Source: Office for National Statistics

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/adhocs/008510numberofdeathsfromtoxiceffectofingestedplantsbyunderlyingcauseenglandandwalesdeathsregisteredin2016>

Suggested and implemented actions

In addition to reassessing the recommendations and risk assessment, UKHSA has emphasised the following regarding the dangers of consuming yew tree berries to its partner organisations: The report to prevent future deaths and related risks was presented orally and in person on December 7, 2023, by UKHSA North West to all 24 Directors of Public Health in the Northwest. This was brought up with Manchester City Council, and directors of public health were then instructed to think about whether any further action should be taken in parks and open spaces within their local authority areas. Furthermore, the Directors of Public Health get access to some generic information, which they can then distribute to their citizens as needed:

<https://www.rhs.org.uk/preventionprotection/potentially-harmful-garden-plants>

Potentially harmful plants (<https://hta.org.uk/>).

Source: https://ntsgroup.org.uk/wp-content/uploads/2016/06/NTSG-Report-1_Trees-and-the-Risk-of-Harm.pdf

<https://www.rhs.org.uk/plants/types/trees/the-law>

<https://arboriculture.wordpress.com/2016/04/13/uk-case-law-relating-to-dangerous-trees/>

<https://www.ltoa.org.uk/resources/legal-cases-involving-trees>

<https://blog.woodland-ways.co.uk/flora/toxic-trees/>

<https://www.bsbi.org.uk/>

<https://www.first-nature.com/>

<https://www.judiciary.uk/prevention-of-future-death-reports/benn-curran-nicholls-prevention-of-future-deaths-report/>

<https://hta.org.uk/potentiallyharmfulplants>

<https://www.rhs.org.uk/prevention-protection/potentially-harmful-garden-plants>

<https://www.gov.uk/guidance/public-rights-of-way-local-authority-responsibilities>

<https://www.legislation.gov.uk/ukpga/1980/66>