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2020 Edition

Encroachment by an Adjoining Landowner in Connecticut

A Guide to Resources in the Law Library

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Introduction

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- "Trespass to land is an unlawful invasion of another's right of possession." [McPheters v. Loomis](#), 125 Conn. 526, 530, 7 A.2d 437 (1939).
- "Though standing on adjoining land the boys in shooting on to the respondent's land, were trespassers...." [Munro v. Williams](#), 94 Conn. 377, 379, 109 A. 129 (1920).
- "A plaintiff's claim may fail simply as a result of his or her inability to establish adequately the disputed boundary line." [Velsmid v. Nelson](#), 175 Conn. 221, 224, 397 A.2d 113 (1978).
- "The court found that the fence had been erected on the boundary line between the parties, entered judgment accordingly, and assessed nominal damages for the trespass." [Baton v. Potvin](#), 141 Conn. 198, 199, 104 A.2d 768 (1954).
- "Title is an essential element in a plaintiff's case, where an injunction is sought to restrain a trespass. *McNamara v. Watertown*, 100 Conn. 575, 579, 124 A. 244. The burden is on the plaintiff to locate the boundary line." [Barrs v. Zukowski](#), 148 Conn. 158, 164-165, 169 A.2d 23 (1961).
- **Adverse Possession:** "This action was brought by the plaintiffs for trespass and for an injunction to restrain the defendants from encroaching on the land of the plaintiffs. The defendants filed a cross complaint claiming title by adverse possession to the contested four-foot area along the boundary of the property of the parties. The court rendered judgment for the defendants on the complaint and cross complaint, finding that the defendants had acquired ownership of the disputed area by adverse possession. It also found that the defendants had failed to prove that they were entitled to any damages." [Lavin v. Scascitelli](#), 172 Conn. 8, 8-9, 372 A.2d 127 (1976).
- **Plot Plan:** "At this time, it was found that trespass upon adjoining property occurred in entering and leaving the plaintiffs' back door and stoop. Prior to this discovery, the parties were unaware that there was a violation of the zoning regulations as to sideyard requirements. The defendant, under a mistaken assumption, had represented by the plot plan that the structure on the lot was twenty feet from the southerly boundary. Unaware of the true fact, the plaintiffs relied on this representation." [Richard v. A. Waldman & Sons, Inc.](#), 155 Conn. 343, 346, 232 A.2d 307 (1967).

Section 1: Encroachment by Vegetation

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to encroachments by vegetation on adjoining land

TREATED ELSEWHERE:

- [Section 2: Encroachment by Structures](#)

DEFINITION:

- "Where trees are located on the property of one party and their roots or branches extend onto the property of a second party, the latter may lop off the branches or roots up to the line of his land. *Robinson v. Clapp*, 65 Conn. 365, 377, 32 A. 939. We find nothing in the zoning regulations abrogating this right. This does not mean, of course, that complete disregard for the welfare of the trees is permitted." [McCrann v. Town Plan & Zoning Commission](#), 161 Conn. 65, 75, 282 A.2d 900 (1971).
- "Now, if these branches were a nuisance to the defendant's land, he had clearly a right to treat them as such, and as such, to remove them. But he as clearly had no right to convert either the branches or the fruit to his own use." [Lyman v. Hale](#), 11 Conn. 177, 185, 1836 Conn. LEXIS 5 (1836).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)
Chapter 446i. Water resources. Invasive plants
§ [22a-381e](#). Prohibited actions re running bamboo. Running bamboo as nuisance
Chapter 925. Statutory rights of action and defenses
§ [52-560](#). Damages for cutting trees, timber or shrubbery

OLR REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- James Orlando, *Falling Trees Damaging Others' Property*, Connecticut General Assembly, Office of Legislative Research Report, [2018-R-0157](#) (June 15, 2018).
- James Orlando, *Tree Roots Damaging Neighbor's Property*, Connecticut General Assembly, Office of Legislative Research Report, [2018-R-0163](#) (June 21, 2018).
- James Orlando, *Trees Falling onto Neighbor's Land*, Connecticut General Assembly, Office of Legislative Research Report, [2017-R-0221](#) (October 31, 2017).

FORMS:

- 1A *Am. Jur. Legal Forms 2d* Adjoining Landowners (2017)
 - § 8: 8. Agreement between adjoining landowners—Encroachment of trees or bushes

- 1A *Am. Jur. Pleading & Practice* Adjoining Landowners (2014)
 - § 96. Complaint, petition, or declaration—Encroaching tree—Nuisance—For injunctive relief
 - § 97. Complaint, petition, or declaration—Encroaching terrace and hedge—For injunctive relief
 - § 98. Complaint, petition, or declaration—Encroaching hedge—For injunctive relief to **prevent destruction of plaintiff’s fence**
 - § 99. Complaint, petition, or declaration—To compel adherence to agreement limiting height of trees—For injunctive relief and damages
 - § 100. Complaint, petition, or declaration—Trees and roots render land unproductive—For injunctive relief and damages
 - § 101. Complaint, petition, or declaration—Encroaching roots and branches—To abate nuisance and for damages
 - § 102. Dead tree falling on house of adjoining landowner
 - § 103. Complaint, petition, or declaration—To compel removal of encroaching vegetation
 - § 104. Answer—No intentional intrusion possible with tree roots—Self-help not exercised—No interference with use and enjoyment of land
 - § 105. Judgment or decree—Enjoining defendant from maintaining encroaching hedge
 - § 106. Judgment or decree—Enjoining removal of trees used as windbreak

- 14A *Am. Jur. Pleading & Practice* Injunctions (2013)
 - § 15. Complaint, petition, or declaration -- For equitable relief from nuisance-- Encroachment on adjacent property--Tree

CHECKLISTS:

- 38 *COA 2d* 1 (2008), Cause of action against abutting landowner for damages caused by encroaching trees or other vegetation. Practice Checklists
 - § 31. Checklist for drafting complaint
 - § 32. **Plaintiff’s discovery checklist**
 - § 33. **Plaintiff’s checklist of elements of** encroachment
 - § 34. **Plaintiff’s checklist of** evidence
 - § 35. **Plaintiff’s checklist of elements of harm to** person or property

§ 39. Defendant's checklist for drafting answer

- 1A *Am. Jur. Pleading & Practice* Adjoining Landowners (2014)
 - § 95. Checklist—Drafting complaint, petition, or declaration--Action for damages for injury to land by trees, shrubbery, and vegetation

SAMPLE CASES:

- 38 *COA 2d* 1 (2008), Cause of action against abutting landowner for damages caused by encroaching trees or other vegetation.
 - § 41. Sample case
 - § 42. Sample complaint for damages and injunctive relief for nuisance caused by vegetation
 - § 43. Sample complaint for nuisance for branch and root encroachment
 - § 44. Sample complaint for trespass and nuisance from branch and root encroachment from tree and shrubs
 - § 45. Complaint for abatement of private nuisance and damages (removal of encroaching roots and branches)

WEST KEY NUMBERS:

- *Adjoining Landowners*
 - # 5. Trees and plants on or near boundary
 - # 9. Encroachments
 - # 10. Right to and obstruction of light, air, or view
- *Environmental Law*
 - # 526 *State and local regulation (of plants and wildlife)*

DIGESTS:

- Dowling's Digest: *Adjoining landowners*
- ALR Digest: *Adjoining landowners*
- ALR Index: *Adjoining landowners - Trees or shrubs Encroachments*

CASE LAW:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- See Table 1: [Encroachment as Trespass](#)
- See Table 2: [Encroachment as Private Nuisance](#)
- Corbin v. HSBC Bank USA, N.A., Superior Court, Judicial District of Windham, No. CV15-6009704, n.5, (June 3, 2016) (62 Conn L. Rptr. 451) (2016 WL 3536424). "The court is also persuaded by the defendant's argument that the Connecticut Legislature has attempted (and failed) to enact legislation that would require private landowners to pay for the removal of tree branches and limbs. The unsuccessful attempts provide support for the argument that no cause of action exists at common law for the present situation and a recognition of the potentially extraordinary costs such legislation could impose on adjoining landowners—especially in the wake

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of large storm events. Moreover, the court recognizes the discussion in *Cordeiro v. Rockville General Hospital, Inc., Superior Court*, judicial district of Tolland, Docket No. CV-07-5001627-S (August 21, 2007, Vacchelli, J.) (44 Conn. L. Rptr. 58), regarding negligence and the duty of reasonable care in inspection of trees. However, this court does not find such argument persuasive in the present matter and again finds the Restatement to be the more applicable holding."

- [Koskoff v. Griffin](#), Superior Court, Judicial District of New Britain, No. CV13-5015813 (April 8, 2015) (60 Conn. L. Rptr. 151) (2015 Conn. Super. LEXIS 774) (2015 WL 2191535). **"In Connecticut, there is some support for the notion that regular and continuous maintenance activities by an adverse possessor might constitute open and notorious use and is at least a factor in making the determination. Other jurisdictions offer more support for the position that maintenance alone may be sufficient to satisfy the elements of adverse possession. The rationale in Connecticut and elsewhere is that activities such as regular maintenance are the type of use which would normally be expected of the owner of a residential and suburban parcel of land."**
- [Rickel v. Komaromi](#), 144 Conn. App. 775, 778, 73 A. 3d 851 (2013). "On appeal, the plaintiff claims that the court erred in rendering summary judgment because (1) it did not address the plaintiff's allegations and arguments in opposition to the defendants' motion for summary judgment that the repeated bamboo encroachment from the defendants' property to her property constituted a continuing nuisance and a continuing trespass...."
- [Cordeiro v. Rockville General Hospital, Inc.](#), Superior Court, Judicial District of Tolland, No. CV07-5001627 (August 21, 2007) (44 Conn. L. Rptr. 58) (2007 Conn. Super. LEXIS 2274) (2007 WL 2570406). **"An owner of property in an urban area may be liable for injuries caused by the falling of a diseased or defective tree, but only if the owner had actual or constructive knowledge of the tree's condition."**
- [Dalton v. Bua](#), 47 Conn. Supp. 645, 822 A. 2d 392 (2003). **"The walls and fences at issue in the malicious structure cases decided since 1867 have been constructions built by persons. When a construction is malicious, the law says 'Don't build it'. Hedges, however, grow naturally. ... These statutes prohibit malicious 'structures' from being 'erected'. They do not require naturally growing plantings to be trimmed."** (p. 648)

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

“For the reasons stated, a hedge is not a ‘structure’ within the meaning of Connecticut’s malicious structure statutes.”
(p. 649)

- [McCran v. Town Plan & Zoning Commission](#), 161 Conn. 65, 75, **282 A.2d 900 (1971)**. “Where trees are located on the property of one party and their roots or branches extend onto the property of a second party, the latter may lop off the branches or roots up to the line of his land. *Robinson v. Clapp*, 65 Conn. 365, 377, 32 A. 939. We find nothing in the zoning regulations abrogating this right. This does not mean, of course, that complete disregard for the welfare of the trees is permitted.”
- [Dalling v. Weinstein](#), 6 Conn. Supp. 498, 499 (1939 Conn. Super. LEXIS 3) (1939). **“Where one's property is cast or stranded upon the land of another as a result of an act of God, such as a flood or hurricane, the owner of the property may enter upon the land where it is and recover it without being guilty of trespass Also, the owner of the stranded property has the option to abandon it. But no rights are given the owner of the land in the stranded property until and unless the owner thereof has exercised his option to abandon it.”**
- [Lyman v. Hale](#), 11 Conn. 177, 185, 1836 Conn. LEXIS 5 (1836). **“Now, if these branches were a nuisance to the defendant’s land, he had clearly a right to treat them as such, and as such, to remove them. But he as clearly had no right to convert either the branches or the fruit to his own use.”**

ENCYCLOPEDIAS:

- 134 *Am Jur POF3d* 469 (2013), Proof of nuisance or negligence against abutting landowner for damages caused by encroaching trees or other vegetation.
- 38 *COA 2d* 1 (2008), Cause of action against abutting landowner for damages caused by encroaching trees or other vegetation.
- 1 *Am. Jur. 2d* Adjoining Landowners (2016)
 - §§ 112-114. Encroachments
 - A. In general
 - § 112. Encroachment prohibited
 - § 113. Encroachment as nuisance
 - § 114. Encroachment as ouster; prescriptive right to encroach
 - B. Remedies for Encroachment
 - 1. In general, §§ 115-121
 - § 115. Action for damages
 - § 116. Measure of damages
 - § 117. Ejectment
 - § 118. Applicable limitation statutes

- § 119. Accrual of cause of action
 - 2a. Injunctive Relief; Equitable Remedy, §§ 120- 121
 - § 120. Injunction as remedy
 - § 121. Equitable relief other than injunction
 - 2b. Factors determining issuance of injunction, §§122-128
 - § 122. Equities between the parties
 - § 123. Inadequacy of remedy at law
 - § 125. Intent, willfulness, or knowledge of encroachment; effect of notice or warning
 - § 127. Acquiescence, delay, or laches; estoppel
 - § 128. Doing equity; clean hands doctrine
- 2 **C.J.S.** Adjoining Landowners (2013)
 - §§ 8-16. Encroachments; Trespass
 - § 9. What constitutes encroachment
 - § 10. Right of adjoining owner
 - § 11. -- Abatement and self-help
 - § 13. Damages
 - § 14. -- Amount and measure
 - § 15. Ejectment; equitable relief
 - § 16. -- Parties liable
 - §§ 17-24. Rights to Trees or Plants on or Near Boundary
 - A. On Land of One Adjoining Owner
 - § 17. Ownership
 - § 18. Duties
 - § 19. Right to self-help
 - § 20. – Absence of injury or minimal injury
 - § 21. Availability of judicial remedies
 - B. On Boundary Line
 - § 22. Ownership
 - § 23. Injury or destruction
 - § 24. - Actions
- Jay M. Zitter, Annotation, *Solar Energy: Landowner's Rights Against Interference with Sunlight Desired for Purposes of Solar Energy*, 29 ALR4th 349 (1984).
- Cheryl M. Bailey, Annotation, *Tree or limb falls onto adjoining property: personal injury and property damage liability*, 54 ALR4th 530 (1987).
- Robert Roy, Annotation, *Encroachment of Trees, Shrubbery, or Other Vegetation Across Boundary Line*, 65 ALR4th 603 (1988).
- F. S. Tinio, Annotation, *Rights and liabilities of adjoining landowners as to trees, shrubbery, or similar plants growing on boundary line*, 26 ALR3d 1372 (1969).

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- James H. Backman, 2 *A Practical Guide to Disputes between Adjoining Landowners—Easements*, 1989, with 2020 supplement, Lexis (also available on Lexis Advance).
 - Chapter 10. Trespass to realty between neighboring and adjoining landowners
 - § 10.04. Encroachment by vegetation
 - [1] —Vegetation on the boundary line
 - [a] —Right to remove
 - [b] —Right to cut back
 - [2] —Vegetation extending or hanging over the boundary line
 - [a] —Right to cut back
 - [b] —Right to take fruit
 - [i] —Fruit from the branches
 - [ii]—Fruit which has fallen to the ground
- Richard R. Powell, 9 *Powell on Real Property*, 1989, with 2020 supplement, Lexis (also available on Lexis Advance).
 - Chapter 68. Boundaries
 - § 68.11. Trees and other vegetation near boundary
 - [1]—Plants on boundary
 - [2]—Encroaching plants
 - [3]—Vegetation injuring or threatening other owners in ways other than mere encroachment
- Cora Jordan and Emily Doskow, *Neighbor Law*, 9th ed. 2017, Nolo (also available on ResearchitCT.org)
 - Chapter 4. Encroachment: Invading branches and roots
 - Chapter 5. Unsound limbs and trees
 - Chapter 6. Boundary trees
- Jacqueline P. Hand and James C. Smith, *Neighboring Property Owners*, 1998, with 2019 supplement, West (also available on Westlaw).
 - Chapter 2. Nuisance
 - §2:30. Encroachment of trees across boundary
 - Chapter 3. Trespass
 - §3:01. Trespass and neighbors
 - §3:02. Necessary elements
 - §3:03. Possession – The crux of the matter
 - §3:04. Trespass distinguished from nuisance
- Kathleen K. Law, *Trees – A Unique Branch of Law*, Probate and Property, Vol. 31, Issue 2 (March/April 2017), pp. 60-63

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Edward G. Mascolo, *A Primer on Adverse Possession*, Connecticut Bar Journal, Vol. 66, Issue 4 (1992), pp. 303-320

Section 2: Encroachment by Structure

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to encroachments by structures on adjoining land.
- TREATED ELSEWHERE:**
- [Section 1: Encroachment by Vegetation](#)
- DEFINITION:**
- **Invasion of right:** "The construction and maintenance of such a structure, like the construction and maintenance upon a house of eaves overhanging another's land, is an invasion of right, but not an ouster of possession. *Randall v. Sanderson*, 111 Mass. 114. The possession of the adjoining proprietor remains unaffected, except that it is rendered less beneficial. The possession and occupancy of the projecting structure has no effect on the ownership of the soil beneath, unless it be maintained under a claim of right for fifteen years, and so should ripen into a perpetual easement." [Norwalk Heating & Lighting Co. v. Vernam](#), 75 Conn. 662, 664, 55 A. 168 (1903).
 - **Equitable relief as remedy:** "It follows that equitable relief was properly claimed and granted. While the plaintiff might have itself removed the nuisance, without appealing to the courts, it was not restricted to reliance upon self-help. Nor had it only a right of action for damages. An injunction might originally have been brought by the plaintiff's grantor to prevent the construction of the projection. This not having been done, the plaintiff could ask for a mandatory injunction to prevent its wrongful continuance." (p. 664)
 - **Mandatory Injunctions:** "Since trespass is a possessory action, it is incumbent on the plaintiff to prove possession, actual or constructive, in order to recover. *Banks v. Watrous*, 136 Conn. 597, 599, 73 A.2d 329. If he relies on constructive possession, as distinguished from actual possession, he must prove, in addition to his title, the absence of actual exclusive possession by another. *Radican v. Hughes*, 86 Conn. 536, 545, 86 A. 220; *Waterbury Clock Co. v. Irion*, 71 Conn. 254, 262, 41 A. 827; *Dawson v. Davis*, 125 Conn. 330, 334, 5 A.2d 703. And if he seeks to enforce his rights by a mandatory injunction, he must show actual possession in himself, since injunctive relief cannot be used to take property out of the possession of one person in order to put it into the possession of another. *Roy v. Moore*, 85 Conn. 159, 166 82 A. 233." [More v. Urbano](#), 151 Conn. 381, 383-384, 198 A.2d 211 (1964).

- **On the Boundary Line:** “. . . the defendants had constructed the stairs on the adjoining boundary line, thereby impermissibly encroaching on the plaintiff’s property.” [Kelley v. Tomas](#), 66 Conn. App. 146, 151, 783 A.2d 1226 (2001).

STATUTES

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)
Chapter 916. Injunctions
§ [52-480](#). Injunction against malicious erection of structure.
Chapter 925. Statutory Rights of Action and Defenses
§ [52-570](#). Action for malicious erection of structure.

OLR REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report’s** publication. Current law may be different from what is discussed in the reports.

- Kevin E. McCarthy, *Common and Statutory Law Provisions Regarding Views*, Connecticut General Assembly, Office of Legislative Research Report, [1999-R-0024](#) January 12, 1999.
- Julia Singer, *Connecticut Law on Spite Fences*, Connecticut General Assembly, Office of Legislative Research Report, <https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0157.pdf> [2018-R-0061](#) (February 22, 2018).

FORMS:

- 1A *Am. Jur. Legal Forms 2d* Adjoining Landowners (2017)
§ 8:6. Quitclaim deed curing encroachment
§ 8:7. Agreement between adjoining landowners—Encroachment of building
§ 8:9. Agreement between adjoining landowners—Overhanging eaves
§ 8:11. Agreement between adjoining landowners—Construction of common stairway
- 1A *Am. Jur. Pleading & Practice Forms* Adjoining Landowners (2014)
§ 76. Complaint, petition, or declaration—Projecting **windows overhanging plaintiff’s property**—For injunctive relief and damages
§ 77. Complaint, petition, or declaration—Encroaching wall—For injunctive relief
§ 79. Complaint, petition, or declaration—Encroaching supports of retaining wall—For injunctive relief
§ 80. Complaint, petition, or declaration—Archway and wall extend beyond boundary—For injunctive relief
§ 81. Complaint, petition, or declaration—Encroaching building—For injunctive relief and damage

- § 83. Complaint, petition, or declaration—Encroaching building and incidental destruction of trees—For injunctive relief and damages
- § 84. Complaint, petition, or declaration—Encroaching building and fence—**Interference with plaintiff’s use** of property for business purposes—For injunctive relief and damages
- § 85. Complaint, petition, or declaration—**Defendant’s building extending over plaintiff’s land and leaning against plaintiff’s building**—Negligent construction—For injunctive relief and damages
- § 86. Complaint, petition, or declaration—Encroaching structures causing increased tax assessment—For injunctive relief
- § 87. Complaint, petition, or declaration—For declaratory judgment and determination that plaintiff has right to remove encroaching portion of building—For injunction and recovery of profits from use of building
- § 88. Complaint, petition, or declaration—To abate encroaching structure as private nuisance and for damages
- § 89. Complaint, petition, or declaration—To quiet title to real property pursuant to boundary agreement—Improvements
- § 91. Answer—Estoppel to deny boundary
- § 92. Answer—Defenses—Good faith belief as to nonexistence of encroachment—Excessive hardship to defendant caused by injunctive relief—No irreparable injury suffered by plaintiff
- § 93. Interrogatories—To determine value of property allegedly lost to encroachment
- § 94. Instruction to jury—Fair market value of land

WEST KEY NUMBERS:

- *Adjoining Landowners*
 - # 9. Encroachments
 - (.5). In general
 - (1). Nature and extent of liability
 - (2). Remedies and procedure in general
 - (3). Damages

DIGESTS:

- Dowling’s Digest: *Adjoining landowners*
- ALR Index: *Encroachments - Buildings*

CASE LAW:

- See Table 1: [Encroachment as Trespass](#)
- See Table 2: [Encroachment as Private Nuisance](#)
- [Errichetti v. Botoff](#), 185 Conn. App. 119, 196 A. 3d 1199 (2018) “As an initial matter, the defendants seem to suggest that uselessness of a structure cannot be found if the owner of the structure merely articulates an ostensibly useful

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purpose. We reject this argument. Uselessness under § 52-480 focuses on whether the structure serves an actual use, not whether the defendants can merely assert a purpose for **erecting the structure.**”

- [Jespersen v. Jespersen](#), Superior Court, Judicial District of Litchfield at Litchfield, No. CV17-6015099-S (Aug. 23, 2018) (2018 WL 4655830) (2018 Conn. Super. LEXIS 2271). **“After they staked the property, the plaintiff pulled out the stakes. There was a subsequent confrontation between the brothers, during which the plaintiff came out yelling and screaming at the defendant about the property dispute. After the defendant re-staked the property line, the plaintiff again removed the stakes and drove the pins down flush. The defendant went to see the Resident State Trooper and reported what happened but did not want the plaintiff arrested. There were no further problems related to the stakes/pins. However, as a result of the dispute, the defendants decided to put up a privacy fence.”**
- [Geiger v. Carey](#), 170 Conn. App. 459, 461, 154 A. 3d 1093, 1115 (2016) **“The self-represented plaintiff, Gordon Geiger, claims on appeal that the court erred in [...] allowing the defendant to retain the majority of his fence [...] We have examined the record on appeal and considered the briefs and the arguments of the parties, and conclude that the judgment of the trial court should be affirmed.”**
- [Caminis v. Troy](#), 300 Conn. 297, 309, 12 A.3d 984 (2011) **“[...]the department expressly stated that it did not grant the permittees any property rights merely because the department had authorized the construction of a dock that otherwise satisfied relevant laws and regulations. Accordingly, receipt of the permits in 1957 and 1984 did not instantly grant the permittees title or property rights to the contested littoral area underlying the dock and pilings. It is immaterial, however, that the permits did not grant the defendants' predecessors property rights in, or title to, the plaintiffs' littoral area, because the permits in this case have no bearing on the defendants' ability to assert a claim of right as part of a claim of adverse possession.”**
- [Dalton v. Bua](#), 47 Conn. Supp. 645, 822 A. 2d 392 (2003). **“The walls and fences at issue in the malicious structure cases decided since 1867 have been constructions built by persons. When a construction is malicious, the law says ‘Don’t build it’. Hedges, however, grow naturally. ... These prohibit malicious ‘structures’ from being ‘erected’. They do not require naturally growing plantings to be trimmed.” (p. 648)**

“For the reasons stated, a hedge is not a ‘structure’ within the meaning of Connecticut’s malicious structure statutes.” (p. 649)

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Kelley v. Tomas](#), 66 Conn. App. 146, 783 A.2d 1226 (2001). **"Here, the court fashioned an equitable remedy to meet the needs of both parties. The court found that it would be useless to order the defendants to remove the stairs and restore the plaintiff's property to its original condition because such an action would result in the construction of stairs that would be in violation of the Norwalk building code. The law does not require the doing of a useless act. We note that at no time did the plaintiff seek only the removal of the stairs from his property. Thus, on the basis of the facts that reasonably were found by the court, we conclude that it did not abuse its discretion when it allowed the stairs to remain despite the fact that they encroached on the plaintiff's property."** (p. 157)

"Our review of the record does not show that the court issued an injunction against the plaintiff. Paragraph eight of the judgment states: 'The court entered an order that neither the plaintiff nor the defendants are to interfere with the other's use of the steps, landings and railing located between the two buildings.' The plaintiff apparently confuses an order of the court with an injunction. It was within the court's inherent power to issue the order in an effort to effectuate its equitable remedy. 'It is axiomatic that the Superior Court, as part of an independent and separate branch of government, has inherent power to do all that is reasonably necessary to enable the court to discharge its judicial responsibilities and to provide for the efficient administration of justice.' *Ruggiero v. Ruggiero*, 55 Conn. App. 304, 307, 737 A.2d 997 (1999). Here, the court did not issue an injunction; it exercised its inherent authority to issue an order that would assist in the discharge of the equitable remedy that it decreed." (p.158)

- [Buddenhagen v. Luque](#), 10 Conn. App. 41, 43-45, 521 A.2d 221 (1987). **"No survey was presented by the defendant to controvert the plaintiff's survey introduced in evidence which showed an encroachment of between 3.87 to 3.91 feet on property adjoining on the rear. Notwithstanding the three orders for compliance and the stop work order, construction continued into January, 1986, when this action was returned to court. The trial judge found that this 'continued construction [was] in total disregard and contempt,' and 'blatantly' ignored § 8.5.5 of the Fairfield zoning regulations [...] The defendant has appealed from this judgment. His sole claim of error is that the court erred in finding the alleged violation because the evidence was insufficient to establish the location of the rear boundary of the defendant's property [...] In accordance with our appellate commitment, we have fully examined the record, trial transcript, exhibits and briefs in this appeal. From that review we are led to the inescapable decision that the trial court's factual findings are firmly supported by the evidence. There is no error."**

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- [DeCecco v. Beach](#), 174 Conn. 29, 32–33, 381 A.2d 543 (1977). **“The intent to injure is determined** mainly from the fact that the structure does impair the value of the adjacent land and injure the owner in its use, from the absence of any real usefulness of the structure, or a portion of it in the present case, to the defendant, and from the character, location and surroundings of the structure itself; and, once it is established that malice was the primary motive in its erection, the fact that it also served to protect the defendant’s premises from observation must be regarded as only incidental, since to hold otherwise would be to nullify the statutes. *Harbison v. White*, supra, 109; see 5 Powell, Real Property s 696, p. 280 (1949 Ed., 1977 Rev.)”
- [Bland v. Bregman](#), 123 Conn. 61, 66-67, 192 A. 703 (1937). **“The complaint alleges that the garage of the defendants is built in such a manner that a portion of the building projects over and upon the land of the plaintiff...”**
- [Norwalk Heating & Lighting Co. v. Vernam](#), 75 Conn. 662, 664, 55 A. 168 (1903). “While the plaintiff might have itself removed the nuisance, without appealing to the courts, it was not restricted to reliance upon self-help. Nor had it only a right of action for damages. An injunction might originally have been brought by the plaintiff’s grantor to prevent the construction of the projection. This not having been done, the plaintiff could ask for a mandatory injunction to prevent its **wrongful continuance.”**
- [Nixon v. Harper](#), 8 Conn. Supp. 8 (1940). **“A mandatory injunction to remove the offending structure should not issue. ‘Where...there has been an innocent mistake...or laches on the part of the plaintiff, or where the conduct of the defendant was not wilful and inexcusable, and where the granting of the injunction would cause damage to the defendant greatly disproportionate to the injury of which plaintiff complains and it appear that damages will adequately compensate the latter...it would be inequitable to grant a mandatory injunction.’ *Bauby vs. Krasow*, 107 Conn. 109, 115. See, also, *Waterbury Trust Co. vs. G. L. D. Realty Co.*, 124 id. 191, 199.” (p. 10)**

“With reference to the latter phase of the judgment, it should be said that it is based on the rule found in *McGann vs. Hamilton*, 58 Conn. 69, 73, concerning the measure of damage for a continuing trespass. ‘The true rule we understand to be, that where real estate is encroached upon, as is claimed in this case, the plaintiff will recover, not the full value of the land, but the damage he sustains in being deprived of its use; and such damage will be limited to past time.’” (p. 11)

- ENCYCLOPEDIAS:**
- 1 *Am. Jur. 2d* Adjoining Landowners (2016)

§§ 112-128. Encroachments

A. In general

§ 112. Encroachment prohibited

§ 113. Encroachment as nuisance

§ 114. Encroachment as ouster; prescriptive right to encroach

B. Remedies

1. In general, §§ 115-119

§ 115. Action for damages

§ 116. -Measure of damages

§ 117. Ejectment

§ 118. Applicable limitation statutes

§ 119. Accrual of cause of action

2a. Injunctive Relief; Equitable Remedy, §§ 120-121

§ 120. Injunction as remedy

§ 121. Equitable relief other than injunction

2b. Factors determining issuance of injunction

§ 127. Acquiescence, delay, or laches; estoppel

- 2 **C.J.S.** Adjoining Landowners (2013)
 - §§ 8-16. Encroachments; Trespass
 - § 9. What constitutes encroachment
 - § 10. Right of adjoining owner
 - § 11. -- Abatement and self-help
 - § 13. Damages
 - § 14. -- Amount and measure
 - § 15. Ejectment; equitable relief
 - § 16. -- Parties liable
- V. G. Lewter, Annotation, *When Does Cause Of Action Accrue, For Purposes Of Statute Of Limitations, Against Action Based Upon Encroachment Of Building Or Other Structure Upon Land Of Another*, 12 *ALR3d* 1265 (1967).
- D. E. Evins, Annotation, *Adverse Possession Based On Encroachment Of Building Or Other Structure*, 2 *ALR3d* 1005 (1965).
- L. S. Tellier, Annotation, *Encroachment Of Structure On Or Over Adjoining Property Or Way As Rendering Title Unmarketable*, 47 *ALR2d* 331 (1956).
- Jay M. Zitter, *Solar Energy: landowner's rights against interference with sunlight desired for purposes of solar energy*, 29 *ALR4th* 349 (1984).
- *Real Estate Purchaser's Rights and Remedies Where Seller is Unable to Convey Marketable Title*, 52 *Am. Jur. Proof of Facts* 3d 429, 52 *POF3d* 429 (1999).
 - § 14. Boundary line encroachments
 - § 31. Uncertainty as to location of boundary
 - § 32. Encroachment of building on seller's property upon adjoining land

- § 33. Encroachment of structures upon government property
- § 34. Encroachment of building from adjoining land upon property

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- James H. Backman, 2 *A Practical Guide to Disputes between Adjoining Landowners—Easements*, 1989, with 2020 supplement, Lexis (also available on Lexis Advance).
 - Chapter 10. Trespass to realty between neighboring and adjoining landowners
 - § 10.03. Encroachment by structures
 - [1] Interference with structures on the boundary line
 - [2] Structures extending over the boundary line
 - [3] Party walls and partition or division fences
- Richard R. Powell, 9 *Powell on Real Property*, 1989, with 2020 supplement, Lexis (also available on Lexis Advance).
 - Chapter 68. Boundaries
 - § 68.09. Encroachments
 - [1]—Actions for encroachment include trespass and nuisance
 - [2]—Remedies for encroachment
 - [3]—If “**intentional**” encroachment (Encroacher consented—victim did not), specific relief is generally granted
 - [4]—If victim of encroachment consented, relief is generally denied
 - [5]—If neither party consented, courts weigh the equities
- Milton R. Friedman, 1 *Contracts and Conveyances of Real Property*, 7th ed. 2005, with 2016 supplement, Practising [sic] Law Institute.
 - Chapter 4B. Encroachments
 - § 4B: 1. Nature of encroachments and projections
 - § 4B: 2. Overhead projections as easements
 - § 4B: 3. Remedies for Encroachments
 - § 4B: 3.1 Self-help
 - § 4B: 3.2 Damages
 - § 4B: 3.3 Ejectment
 - § 4B: 3.4 Equitable remedies
 - § 4B: 4 Encroachments from neighboring property
 - § 4B: 5 Encroachments onto neighboring property
 - § 4B: 5.1 Agreement with adjoining owner
 - § 4B: 5.2 Adverse possession or prescription
 - § 4B: 5.3 Practical location
 - § 4B: 5.4 Statutory Right
 - § 4B: 5.5 Severance of Common Ownership
 - § 4B: 6 Street Encroachments
 - § 4B: 7 Contractual provisions respecting encroachments

Table 1: Encroachment as Trespass

Encroachment as Trespass	
<p>Geiger v. Carey, 170 Conn. App. 459, 154 A. 3d 1093, (2016)</p> <p>Blocking a right-of-way</p>	<p>The court enjoined Gordon Geiger from stopping or loitering on the right-of-way that he shares with the defendant, and further enjoined him from placing barriers, barricades, or items on the right-of-way. (p. 461)</p>
<p>Rickel v. Komaromi, 144 Conn. App. 775, 73 A.3d 851 (2013).</p> <p>Trespass vs. private nuisance</p>	<p>A “private nuisance,” in contrast to a trespass, “is a nontrespassory invasion of another’s interest in the private use and enjoyment of land.... The law of private nuisance springs from the general principle that [i]t is the duty of every person to make a reasonable use of his own property so as to occasion no unnecessary damage or annoyance to his neighbor.... The essence of a private nuisance is an interference with the use and enjoyment of land. (p. 782)</p>
<p>City of Bristol v. Tilcon Minerals, Inc., 284 Conn. 55, 931 A.2d 237 (2007).</p> <p>Essential elements</p>	<p>The essentials of an action for trespass are: (1) ownership or possessory interest in land by the plaintiff; (2) invasion, intrusion or entry by the defendant affecting the plaintiff’s exclusive possessory interest; (3) done intentionally; and (4) causing direct injury. (pp. 87-88)</p>
<p>City of Bristol v. Tilcon Minerals, Inc., 284 Conn. 55, 931 A.2d 237 (2007).</p> <p>Intent</p>	<p>... in determining the existence of the requisite intent for trespass, the issue was not whether the defendants had intended the contaminated substances to enter the plaintiff’s land, but whether the defendants had intended the act that amounted to or produced the unlawful invasion. (p. 89)</p>
<p>City of Bristol v. Tilcon Minerals, Inc., 284 Conn. 55, 931 A.2d 237 (2007).</p> <p>Injury</p>	<p>“The measure of damages to be awarded for an injury resulting from a trespass depends upon whether the injury is permanent or temporary.... A temporary injury is one which may be abated or discontinued at any time....” (Internal quotation marks omitted.) <i>Robert v. Scarlata</i>, 96 Conn.App. 19, 24, 899 A.2d 666 (2006), quoting 75 Am.Jur.2d 95–96, supra, § 127.</p> <p>“[W]here the trespass is temporary in character, only those damages may be recovered which have accrued up to the time of the commencement of the action, since it is not to be presumed that the trespass will continue.” 75 Am.Jur.2d 96, supra, § 128. “When injury to property resulting from a trespass is remedial by restoration or repair, it is considered to be temporary, and the measure o[f] damages is the cost of</p>

	<p>restoration and repair.” Id., § 129. “Where a trespass is of a permanent nature, all damages, past and prospective, are recoverable in one action” and “the measure of damages is the decrease in the fair market value of the property...” Id., § 128. (p.90)</p>
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Table 2: Encroachment as Private Nuisance

Encroachment as Private Nuisance	
<p>Rickel v. Komaromi, 144 Conn. App. 775, 73 A.3d 851 (2013).</p> <p><i>Trespass vs. private nuisance</i></p>	<p>A “private nuisance,” in contrast to a trespass, “is a nontrespassory invasion of another’s interest in the private use and enjoyment of land.... The law of private nuisance springs from the general principle that [i]t is the duty of every person to make a reasonable use of his own property so as to occasion no unnecessary damage or annoyance to his neighbor.... The essence of a private nuisance is an interference with the use and enjoyment of land. (p. 782)</p> <p>[I]n order to recover damages in a common-law private nuisance cause of action, a plaintiff must show that the defendant’s conduct was the proximate cause of an unreasonable interference with the plaintiff’s use and enjoyment of his or her property. The interference may be either intentional ... or the result of the defendant’s negligence. (p. 783)</p>
<p>Rickel v. Komaromi, 144 Conn. App. 775, 784, 73 A.3d 851 (2013).</p> <p><i>Negligence</i></p>	<p>A claim for nuisance is more than a claim of negligence, and negligent acts do not, in themselves, constitute a nuisance; rather, negligence is merely one type of conduct upon which liability for nuisance may be based.” (Footnote omitted.) 57A Am.Jur.2d 85, Negligence § 15 (2012). Furthermore, “[n]uisance is a word often very loosely used; it has been not inaptly described as a catch-all of ill-defined rights.... There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word nuisance.... There is general agreement that it is incapable of any exact or comprehensive definition. (pp. 784)</p>
<p>Ugrin v. Town of Cheshire, 307 Conn. 364, 376-377, 54 A.3d 532 (2012).</p> <p><i>Damages</i></p>	<p>...the requirements for recovery in a private nuisance action are: ‘(1) [t]he defendant acted with the intent of interfering with the use and enjoyment of the land by those entitled to that use; (2) [t]here was some interference with the use and enjoyment of the land of the kind intended, although the amount and extent of that interference may not have been anticipated or intended; [and] (3) [t]he interference that resulted and the physical harm, if any, from that interference proved to be substantial.’ W. Prosser & W. Keeton, Torts (5th Ed. 1984) § 87, p. 622. (pp. 376-377)</p>
<p>Lillien v. Hancock, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. CV08-500128-S (June 29, 2011) (2011 Conn. Super. LEXIS 1656)</p>	<p>To establish a private nuisance and recover damages, the plaintiffs must show: (1) an unreasonable interference with the plaintiffs’ use of their property; (2) the defendants’ conduct was the proximate cause of the unreasonable interference. In order to determine what is unreasonable, the court must employ a balancing test and consider all factors involving the nature of the interference, and the use and enjoyment interfered with, and all surrounding circumstances. Pestey v. Cushman, <i>supra</i>, 259 Conn. at 361.</p>

<i>Damages</i>	
<p>Pestey v. Cushman, 259 Conn. 345, 788 A.2d 496 (2002)</p> <p><i>Odor, unreasonable use vs. unreasonable interference</i></p>	<p>...While an unreasonable use and an unreasonable interference often coexist, the two concepts are not equivalent, and it is possible to prove that a defendant's use of his property, while reasonable, nonetheless constitutes a common-law private nuisance because it unreasonably interferes with the use of property by another person. (p. 359-360)</p>
<p>Walsh v. Town of Southington WPCA, 250 Conn. 443, 446, 736 A.2d 811 (1999).</p> <p><i>Odor, insects</i></p>	<p>The plaintiffs, who are two married couples living on parcels of land abutting the defendants' plant brought an action against the defendants alleging, inter alia, that they had created, maintained and permitted a continuing nuisance to exist that harmed the plaintiffs' respective properties. The manifestation of the alleged nuisance consisted of insects and unreasonable odors that arose from the operation of the plant.</p> <p>That the defendants have been authorized to operate a plant does not, however, mean that they are therefore free from liability when, as the jury found in the present case, the operation of the plant created a private nuisance from which the plaintiffs suffered damages. Such a conclusion would conflict with the well settled conclusions of this court concerning municipal liability for private nuisances, as well as the plain language of § 22a-430-3 (d)(1)(B) of the Regulations of Connecticut State Agencies concerning water treatment permits, which unambiguously provides that "[t]he issuance of a permit does not ... authorize any injury to persons or property or invasion of other private rights...." (p. 446)</p>
<p>Maykut v. Plasko 170 Conn. 310, 317, 365 A.2d 1114 (1976)</p> <p><i>Noise</i></p> <p><i>A lawful act can be a nuisance</i></p>	<p>The use of the corn cannon was a private nuisance, for it affected a few persons in relation to a right they enjoyed by virtue of their interest in land. 58 Am. Jur.2d, Nuisances, § 9; Prosser, Torts (3d Ed.) § 90. Because the fact that an act may otherwise be lawful does not prevent it from being a private nuisance, it is not necessary to consider the legislative and municipal provisions upon which the defendants seek to rely. (p. 317)</p>
<p>Nair v. Thaw, 156 Conn. 445, 451, 242 A.2d 757 (1968).</p> <p><i>Noise</i></p>	<p>Despite the alterations made by the defendant, the operation of the air-conditioning system continued to create annoying noise, to disturb the plaintiff and her husband, and to invade the peace and quiet of her home. The court expressly found the operation to be 'annoying and irritating to persons of average sensibilities' and that it 'continues to be so annoying notwithstanding the baffles installed by the defendant.' (p. 451)</p>
<p>O'Neill v. Carolina Freight Carriers</p>	<p>The court expressly found that the sounds of loud shouting, radios, truck units with motors running on the north side of the</p>

<p>Corp., 156 Conn. 613, 616, 244 A.2d 372 (1968).</p> <p>Noise, lights</p>	<p>defendant's open terminal with the terminal doors open, moving materials and rolling or sliding dollies after 11 o'clock at night are unreasonable.</p> <p>On the basis of these facts, the court concluded that the noises, disturbances and lights emanating from the terminal from 11 p.m. to 6 a.m. are beyond what a normal person of ordinary habits and sensibilities can endure, that the lights on the southerly side of the defendant's property and the operation of the trucking terminal on its northerly side between 11 p.m. and 6 a.m. constitute nuisances, that the conduct of the defendant has not been wilful [sic] or malicious but that, as to the plaintiffs, the conduct of the defendant's business is an abatable nuisance. (p. 616)</p>
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