

A.: My office deals with a variety of legal issues concerning adjoining landowners, a few of which are set forth below:

Boundary disputes are a common issue among neighbors. For example, when the true location of a boundary between two properties is uncertain or in doubt, the coterminous owners can establish the boundary by agreement. (*French v. Brinkman* (1963) 60 Cal.2d 547, 35 Cal.Rptr. 287). The agreement need not be express but may be implied from the surrounding facts and circumstances, including the conduct of the parties. To establish title by an agreed boundary, there are several elements that must be shown. Once established, the agreed boundary line becomes the true line that is legally enforceable between the parties, regardless of the accuracy of the agreed location as compared to the boundary shown by a subsequent survey.

Issues regarding encroachments are also fairly common. An "encroachment" is the extension of a building or other structure beyond the boundaries of the land on which it was rightfully constructed onto adjoining land, or into its airspace, without the permission or consent of the adjoining landowner. When an encroachment actually rests on adjoining land, it constitutes a permanent trespass. When it merely intrudes into the airspace above the adjacent property, it is not a trespass, but a nuisance if the owner of the burdened property is obstructed in the free use of his or her property. (*Barnes v. Berendes* (1902) 139 Cal. 32, 40, 69 P. 491). To establish the existence of an encroachment, it is only necessary to prove that the encroaching structure actually extended beyond its legal boundaries. It is not necessary to prove that the encroachment is the result of negligence or an omission by the owner of the encroaching structure or that it constitutes a hazard to the occupier of the adjoining property.

The locations of trees and roots are also a common issue to be decided by our local courts. A tree whose trunk stands entirely on one's own property belongs exclusively to the landowner although its roots extend into the land of the adjoining owner. (Civil Code section 833). If roots encroach under the adjacent property, there is a trespass and the owner of the adjacent property can cut the roots projecting into the soil if they cause damage. Branches and roots of trees that encroach on another's land and cause or threaten damage may constitute a nuisance. The overhanging branches belong to the adjoining landowner and he or she can cut them off or recover damages.

Issues concerning the discharge of water are also extremely common. The term "surface water" refers to water resulting from rains, snow, or springs that is diffused over the surface of the land, or that is contained in depressions, or that rises to the surface in springs. (*Keys v. Romley* (1966) 64 Cal.2d 396, 405-406, 50 Cal.Rptr. 273). Surface waters are to be distinguished from water that flows in affixed channel, so as to constitute a "watercourse," and from water collected in an identified body, such as a river or lake. The extraordinary overflow of rivers and streams is known as "flood water". These issues are generally very complex and the rules depend heavily on the individual facts.

Other common legal issues concern subjacent and lateral support. "Subjacent support" is the support that the surface of the earth receives from its underlying strata. "Lateral support," on the other hand, is the support received by a parcel of real property from the adjacent land separated from it by a vertical plane. (Rest.2d Torts, sections 817, 819). Civil Code section 832 reaffirms the common-law right of each landowner to the lateral support of the adjoining land and the right of an adjacent owner to "make proper and usual excavations on the same for purposes of construction or improvements," under conditions contained in the code section. An analysis of the liability of an excavating owner for the loss of lateral support to adjoining property requires a comparison of the common law rule of strict liability with the provisions of section 832.

Finally, issues regarding party walls are very common. A "party wall" is a wall located on or at a boundary line between two adjoining properties and used or intended to be used by both owners in the construction or maintenance of improvements on their respective parcels. It may stand partly on each of the adjoining properties or entirely on one of the parcels, and it may or may not be the common property of the two conterminous owners. Ordinarily, a party wall is created by an express agreement between the adjoining owners. However, a party wall agreement can be implied when it is fair and equitable or from the acts and conduct of the parties and the circumstances surrounding the construction of the wall, such that one owner is estopped from denying its existence against the other. (Bank of Escondido v. Thomas (1895) 5 Cal.Unrep. 94, 41 P. 462).

© Copyright 2009 Michael J. Boyajian