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**2015 Edition**

# Encroachment by an Adjoining Landowner in Connecticut

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A Guide to Resources in the Law Library

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# Introduction

A Guide to Resources in the Law Library

- "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.” [McCran 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).
- STATUTES:**
- Conn. Gen. Stat. (2015)
    - Chapter 446i. Water resources. Invasive plants
      - § [22-381e](#). 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
- FORMS:**
- 1A [Am. Jur. Legal Forms](#) 2d *Adjoining Landowners* (2007).
    - § 8:8. Agreement between adjoining landowners—Encroachment of trees or bushes
  - 1A [Am. Jur. Pleading & Practice](#) *Adjoining Landowners* (2003).
    - § 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. [Am. Jur. Pleading & Practice](#) *Injunctions* (2002).
  - § 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* (2003).
  - § 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*
  - Encroachments*
  - Trees and shrubbery*

**CASES:**

Note: 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.

- [Koskoff v. Griffin](#), Superior Court, Judicial District of New Britain, No. CV13-5015813 (April 8, 2015) (60 Conn. L. Rptr. 151) (2015 WL 2191535). Discussion of activities put forward to prove "open and notorious use" of property in an adverse possession claim.
- [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...."
- [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. Sup. 498, 499 (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). "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* (2005).
  - §§ 120-139. Encroachments
    - A. In general
      - § 120. In general
      - § 121. Encroachment as nuisance
      - § 122. Encroachment as ouster; prescriptive right to encroach
    - B. Remedies
      - 1. In general, §§ 123-129
        - § 123. Action for damages, generally
        - § 124. Measure of damages
        - § 125. Ejectment
        - § 126. Limitations, generally
        - § 127. Accrual of cause of action
        - § 128. Acquiescence or estoppel
        - § 129. Removal by self-help, generally
      - 2. Injunctive Relief; Equitable Remedy, §§ 130-139
        - Factors determining issuance of injunction, §§ 133-139
- 2 [C.J.S.](#) *Adjoining Landowners* (2003).
  - §§ 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
- 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:**

- 2 James H. Backman, [A Practical Guide To Disputes Between Adjoining Landowners—Easements](#) (2013).
  - Chapter 10. Trespass to realty between neighboring and adjoining landowners
    - § 10.04. Encroachment by vegetation
      - [1] —Vegetation on the boundary line

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- [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
    - [1] —Fruit from the branches
    - [2] —Fruit which has fallen to the ground

- 9 Richard R. Powell, [Powell on Real Property](#) (2015).  
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](#) (2011).  
Chapter 4. Encroachment: Invading branches and roots
- Jacqueline P. Hand and James C. Smith, [Neighboring Property Owners](#) (2010).  
Chapter 2. Nuisance  
§2:30. Encroachment of trees across boundary
- Edward G. Mascolo, A Primer on Adverse Possession, 66 Conn. B.J. 303, 319-20 (1992).

**LAW REVIEW**  
**ARTICLES:**



# 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:**
- [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." *Ibid.*
  - **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).

**FORMS:**

- 1A [Am. Jur. Legal Forms](#) 2d *Adjoining Landowners* (2007).
  - § 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* (2003).
  - § 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: *Adjoining landowners*; Encroachments

**CASES:**

Note: 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, 157, 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.

“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.” *Ibid.*, 158.

- [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 at 664 (1903). *Self-help and injunction*.
- Nixon v. Harper, 8 Conn. Supp. 8, 10 (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.

"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.'" *Ibid.*, 11.

**ENCYCLOPEDIAS:**

- 1 Am. Jur. 2d *Adjoining Landowners* (2005).
  - §§ 120-139. Encroachments
    - A. In general
      - § 120. In general
      - § 121. Encroachment as nuisance
      - § 122. Encroachment as ouster; prescriptive right to encroach
    - B. Remedies
      - 1. In general, §§ 123-129
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        - § 124. Measure of damages
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        - § 126. Limitation statutes
        - § 127. Accrual of cause of action
        - § 128. Acquiescence or estoppel
        - § 129. Removal by self-help, generally
      - 2. Injunctive Relief; Equitable Remedy, §§ 130-139
        - Factors determining issuance of injunction, §§ 133-139
- 2 C.J.S. *Adjoining Landowners* (2003).
  - §§ 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*, 19 [ALR4<sup>th</sup>](#) 349 (1984).
- *Real Estate Purchaser's Rights and Remedies Where Seller is Unable to Convey Marketable Title*, 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:**

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- 2 James H. Backman, [A Practical Guide To Disputes Between Adjoining Landowners—Easements](#) (2013).
  - 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
- 9 Richard R. Powell, [Powell on Real Property](#) (2013).
  - 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

- 1 Milton R. Friedman, [Contracts and Conveyances of Real Property](#) (7<sup>th</sup> ed., 2005).

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 Agreement with adjoining owner

§ 4B:5.5 Severance of Common Ownership

§ 4B:6 Street Encroachments

§ 4B:7 Contractual provisions respecting  
encroachments