

Understanding and Preventing Tree Conflicts



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California Arboriculture Law



by
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Common Tree Conflicts



**California is the
leader in the
number of
lawsuits filed
in the USA**



FACTS

LAW

RESOLUTION

CONFLICT:

Wrongful Removal or Damage



Trespass

- 1) Nuisance
- 2) View









DOUBLE DAMAGES TREBLE DAMAGES



California Statutes

CC § 3346

CCP § 733

ISSUE:

How Value Tree?

3 Tree Appraisal Methods

- 1) Replacement Method
- 2) Cost of Repair Method
- 3) Trunk Formula Method



Replacement Method

California Lawsuit

Henniger v. Dunn

(1980) 101 Cal.App. 3d 858

- Replacement Cost Unreasonable
- Saplings/Time
- Aesthetic Value



Cost of Repair



Trunk Formula Method

- Largest Commonly Available Transplantable Tree of the Species
- Species Rating
- Measure Circumference of Subject Tree
- Value if Perfect
- Decrease Value for Condition and Location
- Installation Cost

CONFLICT:

Consulting Malpractice







INVOICE

4314

APR 11/10

TO

DEP

DATE 11-28-06

JOB NO.

WEATHER
CONDITION

CONTACT

TREE INSPECTION

AMOUNT

SUSPECT TREE - ALBERTA PINE (PINUS MALTENSIS) 18" DBH, 50' HT 35" DBH
 THIS PINE APPEARS TO BE DYING. THERE IS NO SEASONAL TERMINAL GROWTH
 AND TERMINAL BUDS INSPECTED ARE DEAD. THERE IS A PROFUSION OF SAP
 EXUDING FROM THE LOWER TRUNK WHICH IS INDICATIVE OF STRESS (DECLINE)
 OR FUSARIUM SP. (A PINE-KILLING FUNGUS DISEASE). MY INSPECTION
 REVEALED AN 18" WIDE AREA OF DECAY AT THE N/W ROOT COLLAR. THIS CAVITY
 WAS PROBES WITH A STEEL ROD TO A DEPTH OF 24". THIS IS VERY SIG-
 NIFICANT. THIS TREE PASSES A HIGH DANGER
 RISK TO THE THREE ADJACENT & NEARBY HOMES.



RECOMMENDATIONS

TO
 DUE THE EXTREME RISK FACTOR THIS PINE PASSES TO NEARBY
 HOMES, I AM RECOMMENDING IMMEDIATE REMOVAL FOR
 SAFETY PURPOSES.

DUE 250

Tree Life Concern, Inc. cannot guarantee any specific result as to the improvement or decline of a lawn, plant, shrub, or tree's health due to landscape maintenance recommendations made.
 Client warrants that he/she owns the lawn, plants, shrubs, and trees which he/she has retained Tree Life Concern, Inc. to care for. If any claim is made or legal action filed against Tree Life Concern, Inc. because client does not own a lawn, plant, shrub, or tree, client shall hold harmless and indemnify (reimburse) Tree Life Concern, Inc. for all damages including settlement payments and attorney's fees sustained by Tree Life Concern, Inc.

If Client instructs Tree Life Concern, Inc. to care for or consult regarding trees for which client does not own or owns only in part, client warrants that he/she has gotten permission from the owner or co-owner for Tree Life Concern, Inc. to enter onto owner or co-owner's property and for Tree Life Concern, Inc. to care for the lawn, plant, shrub, or tree. If any claim is made or legal action filed against Tree Life Concern, Inc. because client did not have such permission, client shall hold harmless and indemnify (reimburse) Tree Life Concern, Inc. for all damages, including settlement payments and attorney's fees sustained by Tree Life Concern, Inc.

Arborists cannot detect every condition that could possibly lead to the structural failure of a tree. Tree Life Concern, Inc. does not guarantee the structural integrity of any trees on client's property. Tree Life Concern, Inc. operates under the latest U.S.A. guidelines of the tree care industry cannot predict plant performance and/or safety.
 I have read and understand and agree to the above.

Customer Signature

THANK YOU

inspected the tree on November 28, 2006. noted that the tree had two trunks 18" and 17" in diameter, and was approximately 50' tall. He described the tree as apparently dying with dead buds and no new growth. He also discovered an 18" wide opening at the base of the trunk. Wood in this area was decayed. He probed the cavity with a metal rod to determine the extent of decay. The decay extended 2' into the trunk of the tree.

provided a report (dated November 28, 2006) to the in which he recommended "immediate removal for safety purposes" due to "extreme risk factor" posed by the tree to the adjacent homes.

On November 29, 2006, the tree failed onto the property.

Based on my knowledge and experience in tree risk assessment, went well beyond the normal standard for a tree inspection, for the following reasons:

- The standard would be to perform a visual assessment of tree health and structural condition. performed this assessment.
- Most arborists who find the base of the trunk to be obscured by shrubs and other vegetation would simply delay or postpone the inspection until such time when the plants were removed. did not. He continued the investigation by crawling under the adjacent vegetation in order to inspect the lower trunk. In so doing, he exceeded the standard for an assessment of health and structural condition.
- Third, a basal cavity is an important indicator of decayed wood in the lower trunk and buttress roots. The standard approach upon discovery such a defect would be to recommend a more detailed assessment of the extent of decay. went by this standard by performing a more detailed level of investigation. In so doing, he discovered the extensive nature of the decay.
- Use of a metal probe to assess the extent of decay is a routine procedure used by many arborists in assessing the extent of decay. It is most valuable in situations exactly like the one encountered by, where an open cavity is present. Use of the metal probe allowed to estimate the extent of decay without using a drill or similar device.
- Finally, upon completion of his inspection, provided a written report and photographs to the client. The report clearly indicated the need for immediate action. It is highly unusual to provide such a report at the completion of the inspection. That did so reflects on his concern about the failure potential of the tree.

In summary, 's investigation of the health and structural condition of the subject pine tree did not simply adhere to the standard of care, it exceeded it.

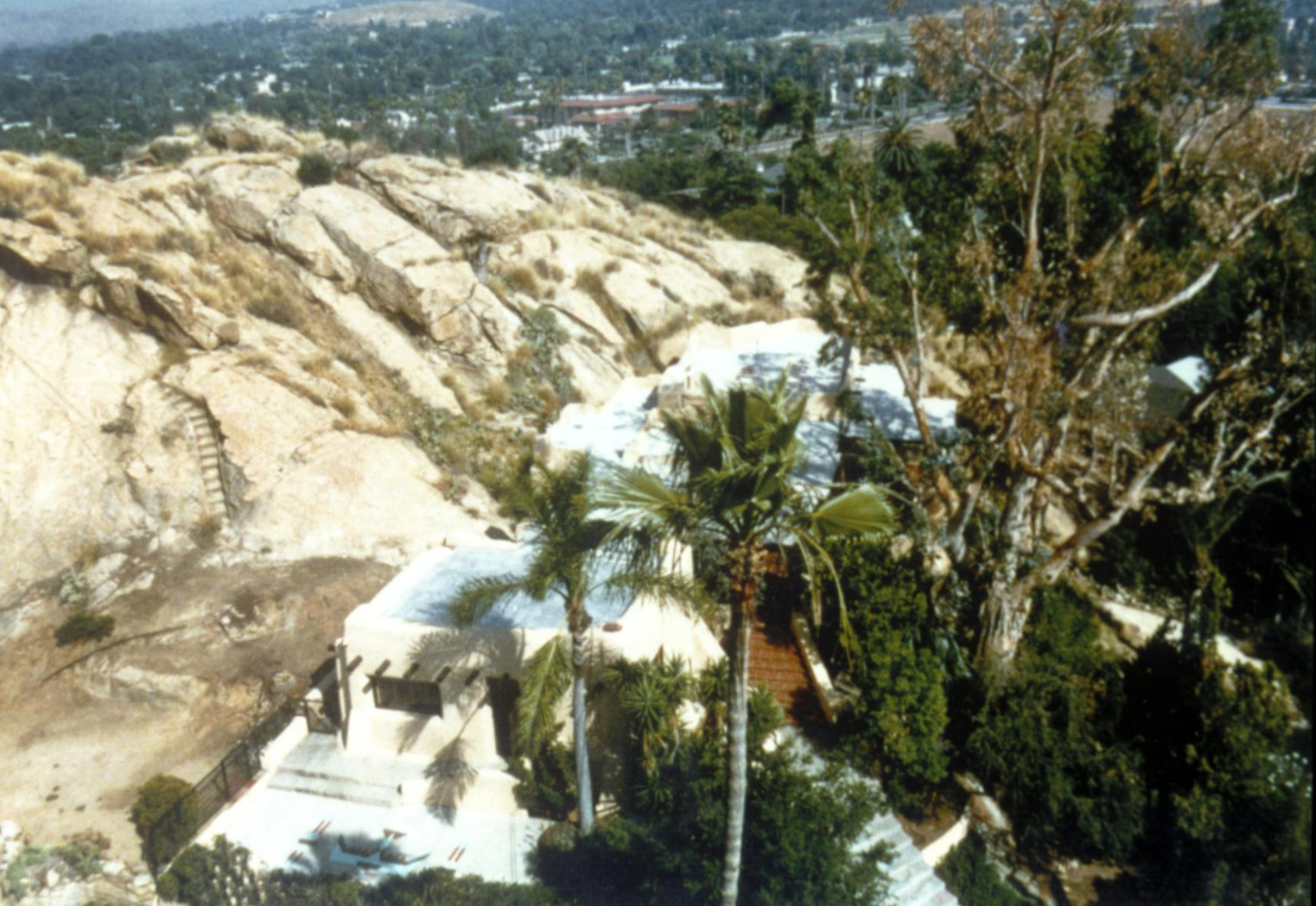
May 6, 2009



CONFLICT:

Arboriculture Malpractice

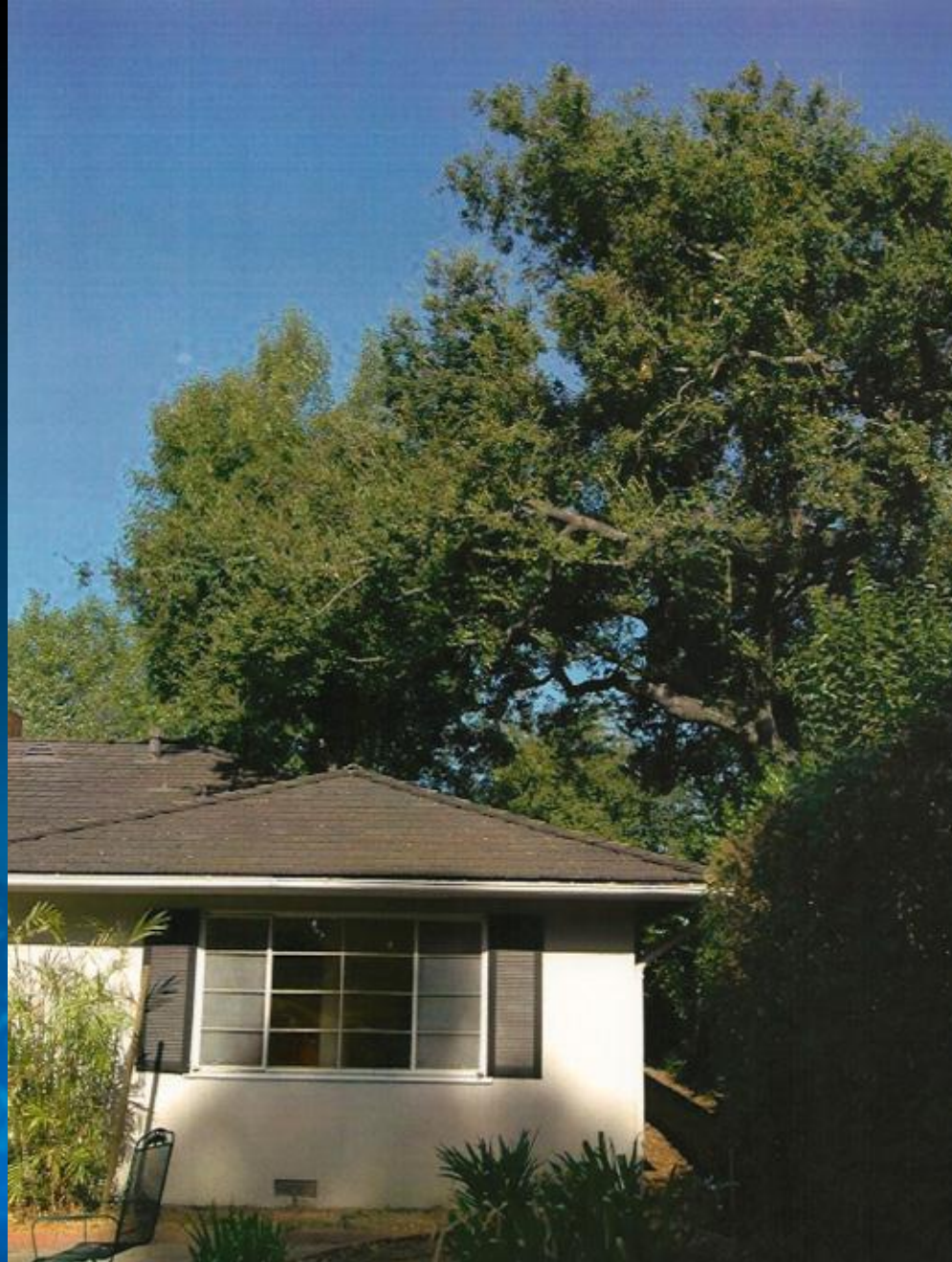




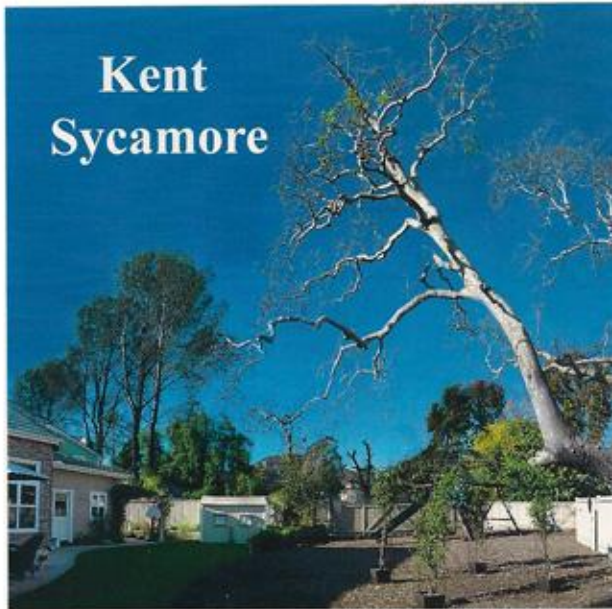


CONFLICT:

Tree Preservation



Kent Sycamore



Assessment and Tree Hazard Evaluation

Prepared for

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January 9, 2006

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THE LAW OFFICES OF **RANDALL S. STAMEN**





CONFLICT:

Encroaching Roots







STRICT “ABSOLUTE” LIABILITY



CONFLICT:

Line Trees

Tree Ownership Dictated by Location of Trunk

- California CC § 833 (Trunk on 1 property)
- California CC § 834 (Trunk on 2 properties)







08/24/2004

CONFLICT: Encroachment







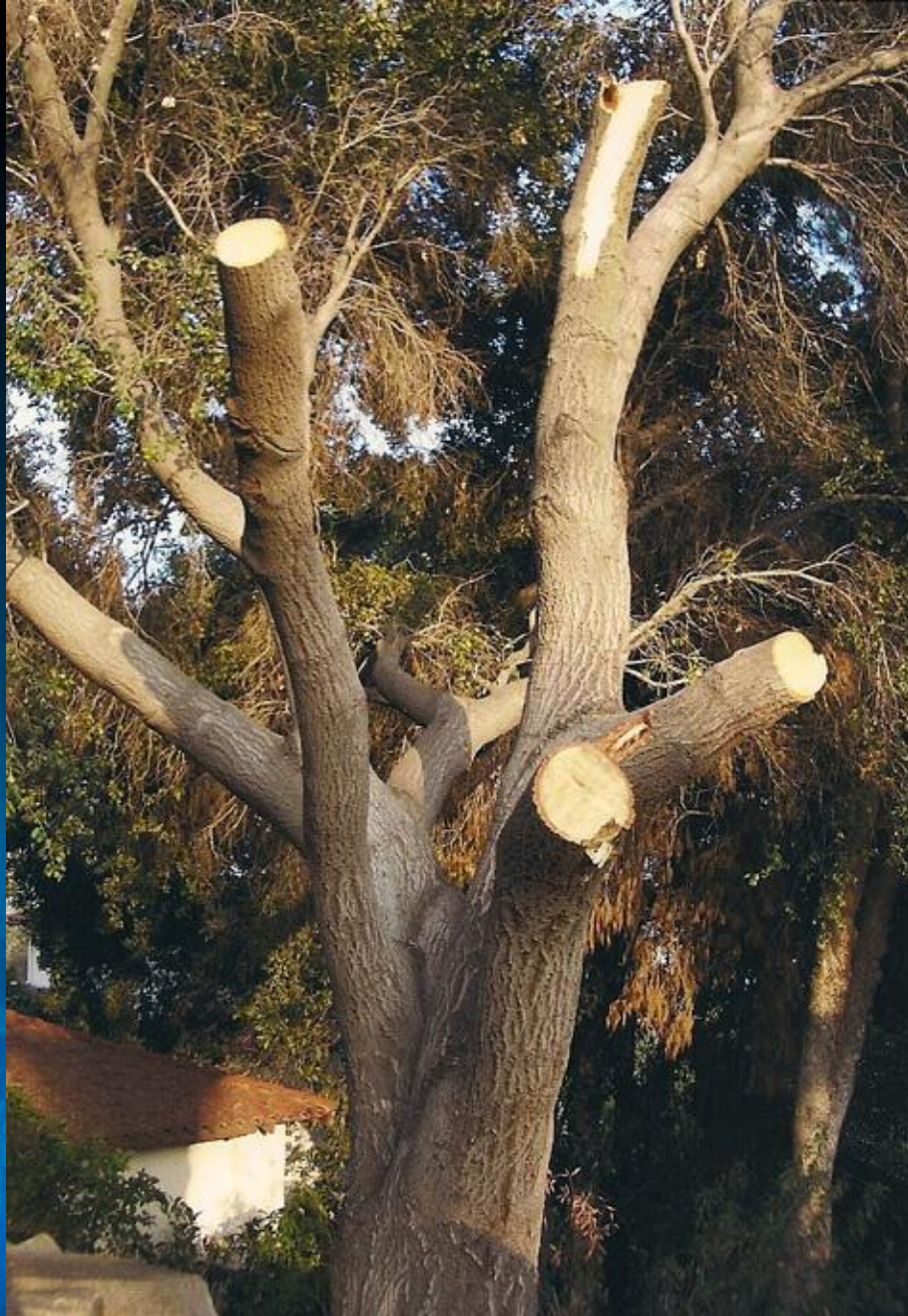












SURVEYOR'S NOTES

- INDICATES 1" I.P. FD. FLUSH SETLS.
3259 TAG EXCEPT AS NOTED.
- INDICATES RECORD PER M.B. 15/84-85.

BASIS OF BEARINGS

TAKEN FROM THE NORTHERLY LINE OF LOT 13 PER M.B. 15/84-85 BEING N81°26'30"E.



BEACON

SCALE: 1" = 5'

Field Book 02/27/08
ERNEST PINTOR L.S. 3259

1.5 x 1.5' CONC.
8" BLOCK WALL W/ 3"

SEE CROSS SECTION

EDGE OF PAVEMENT
SHOULDER N81°26'30"E 109.47' (109.48')

DIRT

12" CUT

14" CUT

10" CUTS

12" CUT

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California Lawsuit

Booska v. Patel
(1994) 24 Cal.App.4th
1786



CONFLICT:

Hazardous Trees











California Statute

GC § 53067

CONFLICT:

Spite Fence





CALIFORNIA STATUTE CIVIL CODE § 841.4

“any fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property is a private nuisance.”



Could go on
and on
and on
and on
and on



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