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By Mark Ellis

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Branch of the law -

A large tree limb leaning over the house next door could lead to a falling-out between neighbors.

Gerard Volker decided to remove a large limb from his neighbor's quaking aspen after it began to stretch over his Northwest Side property and garage. The aspen drops flower clusters -- strings of seeds and twigs -- that tended to clog Volker's gutters and downspouts.

Volker had the right to remove the offending branch over his property but conceded that his first move should have been to alert his neighbor.

"Proactive communication is the lesson in that," he said. "We failed to communicate."

The unannounced tree trimming resulted in a surprised neighbor but no hard feelings, Volker said.

"It's a pretty unique tree, really beautiful. We love it," he said. "But it's a messy tree."

Sorting out the rights and responsibilities of tree ownership can be vexing for homeowners. Some fear that



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branches hanging over their property could be dangerous. Some are irritated when they have to clean up tree debris. Some just want more sunshine in the yard.

Most states, including Ohio, follow common law and "the Massachusetts rule," which is pegged to a court ruling that permits the removal of branches and roots to the property line but warns against malicious destruction of property or killing a tree.

Ron Zaniewski, an arborist and owner of Ohio Tree Care on the West Side, cut off the offending limb for Volker and remembered the neighbor's alarm at finding a trimmer in his tree.

Zaniewski explained what he was doing, and the neighbor had no objection.

"I do come across that," Zaniewski said. "This was a shared tree.

"As I understand it, by law, you are allowed to cut whatever is over the property line, all the way, vertically.

"But it's always good to consult your neighbor before doing it."

The neighbor declined a request to comment.

Talking to a neighbor first makes sense because the owner of a tree must give permission if a tree trimmer needs to climb in the tree to cut branches, according to Victor Merullo, a Columbus lawyer and expert in arboriculture law, which applies to trees, hedges and shrubbery.

Trees that straddle two properties are considered to be owned by both, and decisions about the fate of the tree should be made together, lawyers said.

Neighborly communication benefited Volker on a different occasion when a large tree fell into his yard from another adjacent property. That neighbor agreed to pay for the removal of the tree.

That generous gesture isn't a legal obligation, Merullo said. A healthy tree that falls into a neighbor's yard during a storm usually is the responsibility of the owner of the property where the tree falls.

"Tree law is one of the fastest growing areas of the law," Merullo said. "Courts are more aware of tree issues than they have been in the past. Trees can become hazards and fall and injure people."

Merullo created a Web site in recent months to convey tree- and neighbor-law information (www.treeandneighborlaw.com), and he discusses aspects of tree law at seminars throughout the country.

"Most of tree law is still common law," he said.

English custom is the foundation of common law, which is built on legal precedents established by court decisions.

"I always caution people to act reasonably," Merullo said. "You shouldn't go to extremes. You should not act out of spite or otherwise damage a tree."

Michael O'Reilly, a Pickerington lawyer who specializes in real-estate law, warned against the careless cutting of branches on a neighbor's property, killing a neighbor's tree or removing a tree if there is confusion about the property line.

Ohio law allows a suit to be brought for three times the value of the tree for wrongfully cutting down or injuring another's tree, O'Reilly said.

A common emphasis of lawyers and tree trimmers is communication with neighbors. Zaniewski said neighbors, once consulted, almost always agree to allow a certified arborist onto their property to cut down branches.

Arborist certification is carried out through a voluntary program overseen by the Illinois-based International Society of Arboriculture.

Tom Bowman, arborist and district manager of the Davey Tree Expert Co. based in Kent, said getting permission to trim a tree on a neighbor's property is "the catch."

"The No. 1 thing is communication," Bowman said. "That's huge."

That includes a specific understanding between the arborist and the customer about what is to be cut, he said.

The wood cut from the tree (and any falling fruit) still belongs to the owner of the property where the tree is rooted. If the tree owner doesn't claim the wood after a reasonable amount of time, the neighbor who had the branch or branches cut off must dispose of the debris.

City dwellers have an extra burden when it comes to tree maintenance.

Urban homeowners, including those in typical housing subdivisions, are responsible for inspecting their trees and removing branches and trees in danger of falling because of disease or rotting, O'Reilly said. City dwellers can be held liable if they ignore the danger, and falling branches or trees cause injury or property damage.

Rural landowners aren't obliged to inspect trees, he said, but they must remove obviously diseased or rotting branches.

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