

Tree Law: John Baker (Mitchell Williams) Urban Forestry Council Presentation



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My law firm colleague John Baker undertook a presentation titled:

Tree Law ("Presentation")

The Presentation was undertaken at the Arkansas Urban Forestry Council.

John is a member of the law firm of Mitchell Williams. He has practiced with the law firm since 1997. His practice typically involves a variety of litigation matters such as contract, business tort, and real estate.

John's interest in trees is not limited to associated legal issues. In the Spring of 1997 John and two friends founded a 501(c)(3) nonprofit named Tree Streets. The organization stated that its purpose was to:

... plant appropriate, long-living trees between the sidewalk and the curb along the streets of Little Rock's downtown neighborhoods to provide decades of beauty, shade, and energy-savings for adjacent residents, and habitat for birds and wildlife.

Since the installation of the first tree in 1997 Tree Streets has planted over 1,400 trees (Oaks, Maples, Poplars, and Elms) along more than 100 blocks of the City of Little Rock's streets.

A key focus of John's Presentation was the relevant sources of law addressing a variety of damage and liability issues associated with tree growth. Those sources were stated to be of two primary types:

- Codified or Statutory law
- Federal law from U.S. Congress
- State law from State Legislature
- County law from Quorum Courts
- Municipal law from City Boards of Directors
- Common Law
- Federal common law from federal courts
- State common law from state courts

John noted the absence of law addressing liability and damage issues related to intruding branches and roots. For example, the Presentation noted no reported Arkansas case law addressing this topic.

The potential role of common law doctrines were addressed including nuisance (another's unreasonable use of his land that interferes with a neighbor's use and enjoyment of his own land). The four relevant nuisance doctrines discussed included:

- The Virginia Rule (Court can order the removal of offending vegetation, but only if it is “noxious” and causes actual damage to neighboring property – limited to Arizona.)
- The Massachusetts Rule (Only remedy afforded to the injured homeowner was self-help in the form of cutting back the offending roots or branches.)
- The Restatement Rule (An obligation imposed on a landowner to control vegetation that encroaches upon adjoining land, but only if the vegetation is artificial, not if the encroaching vegetation is natural.)
- The Hawaii Rule (A landowner can sue for the removal of offending vegetation and for monetary recovery of damages, but only when the vegetation causes actual damage or poses imminent harm to landowner’s property.)

A 1950 case from Luxora, Arkansas is cited as the “closest Arkansas case” involving a hedge.

This case was described as involving a hedge Jones planted along 75 feet of what he thought was his lot’s northern boundary. The hedge is stated to have “apparently grew and grew and grew and spread such that it covered up several feet of the adjoining property to the north.”

A purchaser of the property to the north cut down the hedge and a disagreement arose as to the true location of the property line. Jones sued the purchaser to enjoin him from trespassing and Jones prevailed. The Arkansas Supreme Court affirmed but John notes that the Court stated:

. . . it should be pointed out that Jones had no right to maintain a spreading hedge extending over and onto [Gathing’s] adjoining land. [Jones’] boundary stops sharply at the [property] line fixed by the [trial court’s] decree.

Hypotheticals related to personal injuries from trees such as falling or obstructing branches were discussed. Examples included two categories:

- Off property
- On property

The Restatement (Second) of Torts § 363, 840 applies to the “off property” scenario.

As to the on property scenario, the Presentation notes that Restatement (Second) of Torts § 342 is applicable. Section 342 describes the three requirements for when a possessor is subject to liability for physical harm caused to guests by a condition on the land.

The *Presentation* included a discussion of the liability for “cut or damaged” trees. The potential damages associated with these scenarios are stated to vary with the parties involved such as:

- Private party
- Utility
- Governmental body
- Private contractor for governmental body

The Presentation reviewed the options for evaluations such as:

- Fair market value of timber cut
- Difference in fair market value of land before and after occurrence
- Cost of replacement of the trees, if ornamental or shade
- Value of the wood in a manufactured state

The relevant Arkansas statutory provisions discussed included:

- Double damages – Ark. Code Ann. 15-21-301
- Triple damages – Ark. Code Ann. 18-60-102

Scenarios involving governmental takings and eminent domain seizure (i.e., utility, railroad, pipeline) were reviewed (including related hypotheticals).

The legal issues involving government contractors were stated to include:

- Is the contractor protected under the acquired-immunity doctrine?
- Is claim barred by the “acceptance doctrine” or “accepted-work” doctrine? (Abolished in Arkansas in 1999)
- Did a recorded easement exist that gave the contractor a legal right to do the work it did in the easement?

Finally, the relevance of local laws was identified. Examples cited included the Little Rock Code. For example, Sec. 22-234 states it:

...shall be unlawful for any person or business to plant, prune, remove, spray, or otherwise treat public trees without evidence of applicable certification, license or permit.

The Little Rock Code provision addressing tree pruning was reviewed. Further, a potentially relevant Eureka Springs Code provision was addressed.

[A copy of the slides can be downloaded here.](#)