



Subsidence Law

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What is the law?



Negligence/Nuisance

Breach of duty

Foreseeability

Causation

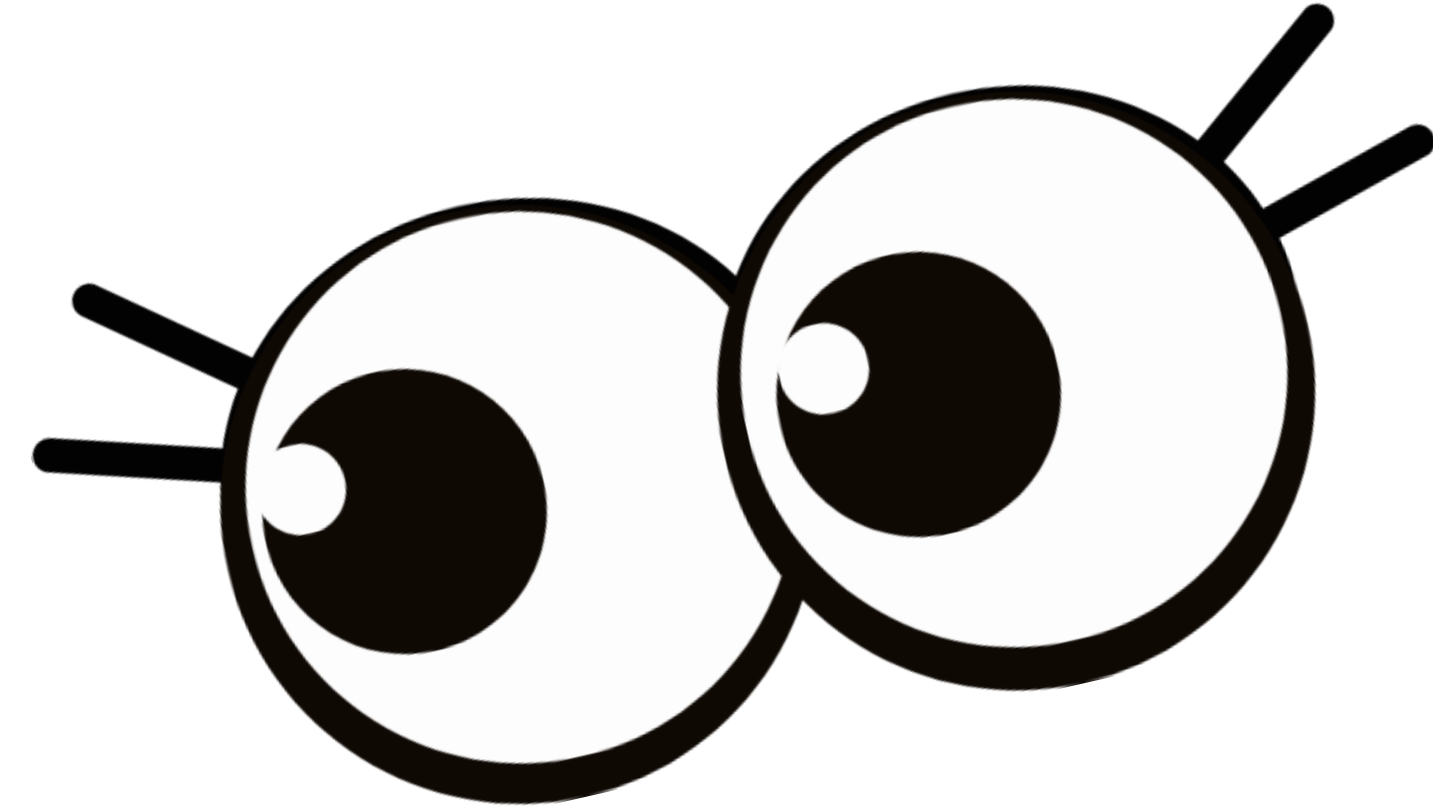
Highways Act 1980

When might the tree owner be liable?



To answer this I will presume that the other parts of the negligence test are established, i.e., no argument on duty of care and causation

1. Being put on notice
2. Real Risk
3. Hot spot area



Notice



Being put on notice - telling the local authority that their tree is causing damage to a property and being provided with evidence in support of that. From that point onwards, the risk of further damage is foreseeable



On notice letters – industry practice of putting local authorities on notice of a future risk of damage is not enough to make any possible future damage foreseeable (in my opinion)

Real Risk



This is reference to an objective risk, for example where the tree is so large, so unique, so obvious a risk given the known characteristics of an area that a reasonable local authority should take action to ensure that tree doesn't cause damage. There is no 'real risk' test. It is a question of judgement



Real Risk



Tree Root Subsidence example



Hot spot area- Having consideration to prior claims in the area should the risk of the tree causing damage have been such that the local authority took reasonable steps to ensure that the tree did not cause damage





Is the tree the primary cause of the subsidence?

Legal test - 'but for the tree would the subsidence have occurred?'

What else could be causing the cracking?



Leaking drains

Solution features

Shallow foundations

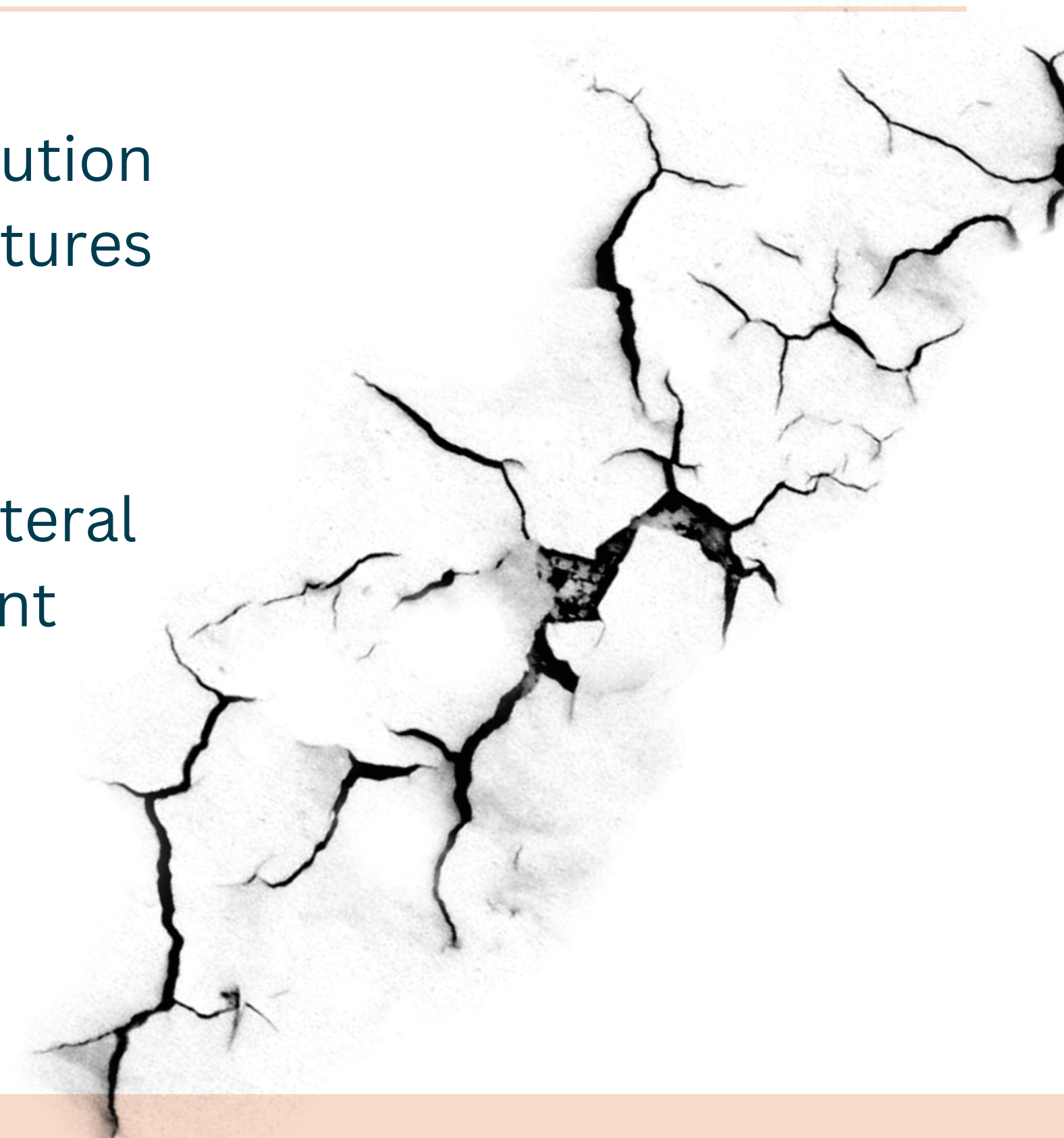
Heave

Differential movement

Lack of lateral restraint

Sun & evaporation from ground

Roof spread



Investigation is key



Just because a tree is near by doesn't mean it is the cause.

There is no more than a 5% chance of any tree causing a property to subsidence even in a hot spot area

A tree is only responsible in law if it is the primary cause of the damage

In reality lots of factors can be in play at once

Investigating all possible causes allows for the right cause to be found and, most importantly, the right solution



Want to know more?



tree law

Summer Seminar Tour

Join the 'Tree Hugging Lawyer' and guests in a half-day seminar around managing risk from trees; a legal update; technical input and expert panel Q&A



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