

# LIABILITY FOR ROADSIDE TREES

Brodies LLP

Scottish Forestry and Timber  
Technologies Conference



ENLIGHTENED THINKING

# TONIGHT'S SPEAKERS



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# SUMMARY

- Ownership of trees
- Duties of owners and managing risk
- The role of road authorities in dealing with roadside trees

# OWNERSHIP OF TREES

How do you determine who owns a tree?

- The different approaches
  - Roots
  - Stem (or Trunk)
- Approach in *Hetherington v Galt*
- Is the law settled?



# WHAT ABOUT THE BRANCHES?

## Encroachment & related issues

- Branches of a tree belong to the trees' owner
- Encroachment
- Rights of the encroached
  - Entitlement to cut off overhanging branches
  - (Old) authority the person encroached upon can ask the encroacher to perform the necessary cutting

# DUTIES AS OWNER

## Management and mitigation of risk

- Foreseeability of harm
- Duty to monitor, manage and mitigate risk
- Liability if you fail in this duty
  - Common law (*Sabet v Fife Council* 2019 SLT 514)
  - Statute (Occupier's Liability (Scotland) Act 1960)

# Roads authorities

- Legal definition of road:
  - *"any way (other than a waterway) over which there is a public right of passage (by whatever means) [and whether subject to a toll or not ] and includes the road's verge"*
- What is included in verge – a matter of fact
- Powers exercised by roads authorities for functions as roads authorities
- Need to consider whether powers are being exercised for roads purposes



- Roads authorities' powers – with reference to maintenance/obstruction of road and traffic
- Statutory powers to require works on overhanging trees endangering passage
- Authority can undertake works where danger is imminent or notice ignored
- No general power to remove diseased trees
- Duties of roads authorities

**Any questions?**

# KEY CONTACTS



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