



# GOLDBERG & GOLDBERG

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## Practice Areas

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Goldberg & Goldberg has consistently earned the Preeminent AV Rating, the highest awarded by the Lexis-Nexis Martindale-Hubbell Peer Review Ratings, based on our legal ability and devotion to professional ethics. Since Martindale-Hubbell bases assessments on surveys of members of the bar and of judges, we take pride in our colleagues' recognizing and respecting the quality of our legal work.

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# is that tree your responsibility?

Many of you were likely affected by the recent series of devastating storms that knocked down trees and limbs and left hundreds of thousands without power in the area. Homeowners that suffered damage to their home and property likely confronted the question of who bears the responsibility of clean up or repair when a tree from an adjacent property causes damage to their homes. The legal analysis is fairly simple but the practical implications may be more complex.

In most situations, your own homeowner's insurance company will reimburse you for the cost of any damage to your property when a tree falls, subject to the amount of your deductible. This is the case whether the tree was your tree or on your neighbor's property. This may upset some because nobody likes to make a claim against their own insurance company which could result in an increased insurance premium or non-renewal of their insurance. The only situation, however, under which your neighbor or his insurance would be responsible is if you are able to show negligence on the part of your neighbor. You would need to show that your neighbor knew, or should have known, that their tree was in danger of falling due to visible or other known issues such as internal tree decay, deterioration or prior issues with the tree. If the tree is healthy or there is no indication that it is in danger of falling, a fallen tree becomes your responsibility and not that of your neighbor or his insurance company.

The same analysis applies where an individual is injured by a falling tree. We obtained a verdict on behalf of a client who was paralyzed when a tree fell on his vehicle while he was driving in Rock Creek Park on a sunny, windless day. The portion of the tree

that fell weighed an estimated ten tons and measured approximately ninety feet. We brought suit in the United States District Court against the District of Columbia and the Federal Government arising from their joint obligation to maintain the trees overhanging the park roadway. The Court adopted our arguments and found that the defendants had failed to conduct inspections and take action that would have revealed the structural weakening, rot and disease that had caused the massive trunk stem to fall on our client's vehicle and cause his devastating injuries.

Now that the storms are over, you may be thinking about how you can protect yourself in the future from trees or limbs that may pose a hazard to you by encroaching on your property from a neighbor's tree. Courts have uniformly held that a property owner has a self-help remedy; that is, a right to cut encroaching branches, vines and roots even if the tree itself is on a neighbor's property. If you decide to take down a tree, however, make sure that it is on your property or that you obtain the written permission of your neighbor. We recently represented a homeowner who was challenged by a neighbor for removing a tree that the neighbor believed was on her property. The neighbor hired an arborist to determine the value of the tree, and then sought to bring a claim against our client for three times the value of the tree based on a local law that entitles a homeowner to recover up to three times the value of a tree wrongfully removed, together with the costs of any surveys, appraisals and attorneys fees incurred by the homeowner. The clear moral of the story is that it is best to first talk to your neighbor prior to removing any trees that might appear to be even partially on your neighbor's property. ■

## BEWARE OF stroller dangers

In some older-model strollers, the opening between the grab bar (or tray) and the seat bottom is less than eight inches, which can be a serious problem for babies up to a year old. When a baby is not harnessed properly, their body can slide through the opening, but their head and neck may get stuck.

The Consumer Product Safety Commission (CPSC) has documented 30 infant deaths since 1980 linked to this flaw. The following companies have recalled these older strollers and offer a free repair kit or a replacement piece that can rectify the problem:

- Graco Quattro Tour™ and MetroLite™ Strollers
- Tike Tech Single City X3 and X3 Sport Jogging Strollers
- Valco Baby Tri Mode Single and Twin Jogging Strollers
- Zooper Strollers

**Make sure to always use the safety harness when your baby is in the stroller.**

Fingers may also be in jeopardy—for children and adults. The CPSC is aware of at least 23 incidents of fingertip amputations occurring from 2008 through April 2012 among children under age 5. As parents open or close strollers, unguarded hinges can cause deep lacerations or lop off fingertips on wayward hands.

Several manufacturers are offering hinge covers for recalled strollers:

- Britax “Blink” single-umbrella strollers
- CYBEX Ruby, Onyx, and Topaz model umbrella strollers
- Graco Passage™, Alano, and Spree Strollers and Travel Systems
- Maclaren single- and double-umbrella strollers
- Kolcraft Contours Options three- and four-wheeled strollers
- Phil & Teds USA Sport v2 and Classic v1 single-seat jogging strollers

Keep any hands clear of the hinges when opening or closing. It’s illegal to sell a recalled product, whether at a retailer, thrift store, or yard sale.

For more specific information, please see the Consumer Product Safety Commission’s website at [www.cpsc.gov](http://www.cpsc.gov). ■

## SUGARS IN FRUIT... the sweet truth

Fruit sometimes receives bad press as far as sugar content goes. Many defenders of fruit consumption lay the blame squarely on the glitzy arrival of the low-carb diets a few years back. Whatever the turning point, misconceptions abound.

Some claim that fresh fruit is “all sugar.” Nothing could be further from the truth. Fresh fruit offers vitamins, minerals, fiber, water, and phytonutrients (naturally occurring plant compounds that do a body good), all at roughly 75 calories per serving—an impressive nutritional package.

Others cast aspersions that fresh fruit is “loaded with carbs and full of sugar.” Fruit *is* predominantly carbohydrates—healthy starches, natural sugars, and structural elements that provide fiber. But that’s the nature of all plant foods, fruit and veggie. And...most fruits have little, if any, fat, making them great snacks and meal complements.

The *form* of carbohydrates one consumes is a vital component of the nutritional debate as well. Natural carbohydrates in fresh fruit are healthful and accompanied by other vital nutrients. However, carbohydrates in the form of empty calories reside in many products occupying grocery store shelves, ride shotgun with many non-beneficial additives, and are pretty much useless and/or detrimental to one’s health.

*The key to a healthy diet is balance.* Too much or too little fresh fruit is generally not a wise idea for anyone and can have consequences for the body; the same is true of other quality, healthful foods.

In case you’re curious, here’s a sampling of fresh fruits (...and berries) and their sugar content. Not all are created equal:

- Blackberries and strawberries (7 grams of sugar per serving)
- Apple (13 g)
- Pineapple (16 g)
- Orange (17 g)
- Banana (18 g)
- Grapes (23 g) ■



# CONTINGENCY FEES **open** the courthouse doors

A contingency fee agreement is a payment arrangement in which fees are paid to any attorney by his/her client only when the attorney wins or settles a case. If the case is unsuccessful, the client pays no legal fees. If the attorney wins or settles the case, then he/she will be entitled to a certain percentage of the recovery, which may vary depending on whether the case was litigated or settled at an earlier stage in the proceedings.

In other words, a lawyer assumes the risk for all the work he/she performs in an attempt to settle or successfully litigate a case. This provides an incentive for the attorney to obtain the best possible outcome for the client, since this is the attorney's only source of compensation.

One of the major benefits of the contingent fee arrangement is that it allows people who otherwise could not afford to pursue a claim the opportunity of access



to the courthouse. This gives them a chance against those responsible for their harm or duress, which is often a large corporation for whom money is no object.

Some say that this system enables frivolous lawsuits. This argument is backwards and makes no sense. A lawyer would certainly avoid taking on a frivolous lawsuit and devoting a tremendous amount of time, effort and money to a case that has no merit and little chance of success.

One of the biggest dangers to the contingency fee arrangements are arbitrarily small recovery caps that corporations and insurance companies support and many legislatures have passed. With the risks and expenses of litigation being so high, if the potential recovery is limited, the case—no matter how just and meritorious—simply may not be cost effective to bring. This is the saddest consequence of damage caps. ■

## August Important Dates & Fun Facts

August 5 – Friendship Day  
August 19 – National Aviation Day  
August 26 – Women's Equality Day  
Birthstone – Peridot  
Flower – Gladiolus

## did you know?

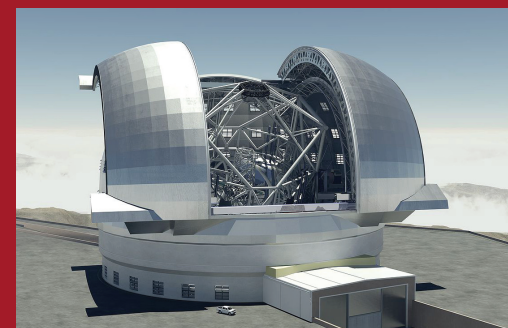
### The World's Largest Optical Telescope is on the Horizon

A scientific consortium in Europe has approved a project to build the largest optical telescope ever seen on Earth.

The giant telescope, dubbed the European Extremely Large Telescope, or E-ELT, will be 129 feet in diameter and feature segmented-mirrors. The E-ELT will be built on top of a mountain called Cerro Armazones in northern Chile and will be much more sensitive than any other telescope in the world, collecting at least 12 times more light than today's largest scopes.

So what's the price tag for such a massive undertaking?

At current exchange rates, it's estimated at about \$1.35 billion. Construction is expected to begin later this year, and officials hope the mega-scope will be operational by the early 2020s. ■



Artist rendering –  
Swinburne Astronomy Productions/ESO

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## IS THAT TREE your responsibility?



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This publication is intended to educate the general public about personal injury, medical malpractice, and other issues. It is for information purposes only and is not intended to be legal advice. Prior to acting on any information contained here, you should seek and retain competent counsel. The information in this newsletter may be freely copied and distributed as long as the newsletter is copied in its entirety.

## TO BE OR NOT TO BE... a financial pack rat

Don't throw things out too quickly; don't hold on to things forever. When it comes to financial records, where do you draw the line? Here are a few guidelines to keep you from under- or over-working your paper shredder:

**Tax documents** – Keep returns, receipts, W2s, and records for tax deductions for seven years. (The IRS has seven years to audit (torment?) you if they feel you made an error on a tax return.)

**Bank statements** – Keep monthly statements for one year. One exception: If you made a purchase that relates to a home improvement, a business expense, or your tax situation, keep it permanently. (Yes, banks keep this info on their computer systems, but if you want them to dig up something from more than two years prior, you may be charged for it.)

**Credit card receipts and statements** – Save the receipts until you receive your statement, then chuck them. If the statement

has any relevance to your tax situation, keep it for seven years; if not, 60 days.

**Pay stubs** – Hang on to pay stubs until you receive your W2. Compare, verify, then shred.

**Bills (summaries)** – Now, as tempting as it is to immediately unload these unfriendly reminders of the slings and arrows of life, keep them for a year, then shred them. If they're bills for big-ticket items, keep them permanently.

**Home records** – Permanently reserve records relating to your home. This includes any bills for home improvements, which can affect your capital gains.

**Brokerage and investment records** – This is tied to the tax stuff, so keep it on hand for seven years. ■



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