

# Calif. Ruling Limits Strict Liability In Lateral Support Cases

By **Paul Weinberg** (August 18, 2026, 5:35 PM EDT)

California law has, through the last 100 years, established and maintained a pattern and expectation on the part of real property owners that their neighbors above or below them, or to the side of them, won't do anything to their property that will jeopardize their property's stability and support.

That seems almost axiomatic; common sense would dictate that neighbors can't or shouldn't do anything that would interfere with the safety and security of their property or someone else's. Things are changing, though.

While a July 20 decision from the Court of Appeal of the State of California, First Appellate District, articulates the change in the law and charts its development, this weakening of the strict liability standard applied to liability for loss of lateral support has been developing for a long time judicially.



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The decision in *Quinn v. Coulton*, heard in California's First Appellate District, Division Two, essentially held, unqualifiedly, that if a landowner wants to bring an action in strict liability for loss of lateral support of their property, the neighbor causing it must have excavated, and most likely negligently, to do it.

"Because California law does not recognize a strict liability claim for loss of lateral support absent some excavation activity, we reject the uphill neighbors' challenge to the in limine ruling," the First Appellate District wrote.[1]

The *Quinn* court has drawn a line in the sand: Don't ask the court to find strict liability if the support on your lot fails unless your neighbor actually dug their lot out.

Failure of a retaining wall, overwatering, poor construction of drainage and failure to take into account topography in planning drainage — none of these are going to amount to or give rise to strict liability if your lot fails.

The *Quinn* opinion recites some interesting, and perhaps unique, facts, including:

After a 100-year storm dropped over five inches of rain on San Francisco in 24 hours, a retaining wall — which separated the backyards of two uphill neighbors from the backyards of two downhill neighbors — failed, "causing soils from the uphill properties to crash down into the backyards of the downhill properties," filling the downhill properties with mud and debris. [2]

The downhill property owners sued for loss of lateral support and claimed that the strict liability standard in California applied. The reasoning was unique, if somewhat labored. According to the appellants' opening brief:

Because the right to lateral support is a property right — as distinguished from a duty arising in tort — the Court of Appeal has long held that harms resulting from infringement of the "absolute right" to lateral support are "unaffected with any element of foreseeability associated with the liability for negligence." [3]

Lateral support cases usually involve excavation by the offending landowner, but this one did not.

Because it didn't, both the trial and appellate courts decided that the standard of strict liability against the offending landowner — where a defendant is held automatically responsible for damages or injuries they cause, regardless of fault, intent or negligence — would not apply.

At the risk of invoking a malapropism, this was a groundbreaking clarification of the law and a clear signal to California lawyers, insurance carriers and judicial officers that a reflex, knee-jerk application of the strict liability standard when there's a loss of lateral support wouldn't be invoked anymore.

Section 832 of the California Civil Code provides a safe harbor for excavators who don't want to get sued by their neighbors for loss of lateral support. It's actually pretty clear: "Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement." [4]

Section 832 gives a checklist to the excavator for the safe harbor to avoid liability. They have to give reasonable notice; they have to use ordinary care and take precautions to support the land; and, if they're going to go deeper than the adjoining neighbor's foundation, and it's close enough to pose a risk, the innocent neighbor has to be given at least 30 days to protect their property and a reasonable license to enter the site.

All this language essentially adds up to a negligence standard, not a strict liability one. The Quinn court was trying to make clear that, in the absence of excavation, California law is not going to apply the strict liability standard at all.

This holding and position were replete through the Quinn opinion. In a comment on Page 9, the court went to extremes to make that clear:

Thus, the Legislature enacted Civil Code section 832 to "relax" the common law rule by eliminating absolute or strict liability for excavation in specified circumstances ... However, Civil Code section 832 did not change the baseline rule that a landowner who negligently excavated would be liable for any damage to the property and/or improvements. [5]

What makes this holding and ruling so important and the subject of commentary and discussion among California real property lawyers? Simply put, courts and the California Legislature are now, in continuation with the recent past, significantly narrowing the entire principle of strict liability when it's applied to obtain damages for loss of lateral support.

If you don't excavate, you can't invoke it. Even if you do excavate, you're very likely to have the doctrine of simple negligence applied as a standard against you if a slope failure or other damage takes place and you're sued for it. The only way it won't be applied is if you have followed the safe harbor rules and are found not negligent at all.

But why did the Quinn court go to the trouble to thoroughly analyze this case and, if not make new law, clearly clarify existing law? The answer really lies in public policy, not precedent.

"There are some limitations to this common law 'absolute right' to lateral support that implicates strict liability," the Quinn court wrote. [6] "The expansive nature of strict liability 'had become burdensome and unrealistic among changing conditions involving the growth of urban communities ... and the commonplace necessity of surface excavation for building purposes.'" [7]

The court's rationale followed the respondent's argument in its brief that the appellants' "'strict liability' standard is unworkable in the modern era of real estate development," per the First Appellate District's 1967 findings in *Marin Municipal Water District v. Northwestern Pacific Railroad Co.*

So where does this leave us? Clearly, the ingrained prejudice and belief that the duty to provide lateral support is absolute no longer exists, if in fact it ever did. Essentially, the real standard now, especially in the absence of excavation, is negligence.

Commentators with the University of California's Continuing Education of the Bar have pointed out that

In common law, the adjacent property owner had an absolute duty of lateral support; Every landowner was entitled to lateral support from every coterminous owner... Civil Code section 832 relaxed this absolute rule, but it does not permit or excuse negligence that causes damage to or destruction of a neighbor's property; it still requires a party performing excavation to exercise ordinary care and skill.[8]

In essence, if there is an excavation, strict liability will still be applied if Section 832 isn't followed.

This is a development that has been a long time coming. Not only does Section 832 relax the strict liability standards, but also case law is following it. What makes the *Quinn v. Coulton* case unique is that it absolutely, clearly and with finality makes that point: "In California, there is no claim for strict liability claim for loss of lateral support absent excavation," as the court put it.[9]

The complaining landowner is thus left with a much higher burden and degree of proof, evidence and, most likely, recitation of the property's history, which may or may not be deemed relevant to the fact-finding of liability.

In the *Quinn* case, the defendant didn't build the retaining wall and most likely didn't even know about it. She was at least one and perhaps two owners removed from the constructor of the retaining wall. She most likely did not know whether any leach lines, French drains or other types of slope drainage were ever installed.

Traditionally, given that the rains causing the failure and loss satisfied the 100-year standard, the circumstances were clearly extraordinary. The First Appellate District was reaching out here to protect her; the court made clear that it would be an unjust result for the doctrine of strict liability to be applied against her.

It can be inferred, too, that a successor-in-title may very well escape, in the absence of excavation, liability for loss of lateral support because it didn't cause it, and it didn't know about it.

If you're a landowner who suffered a loss of support to your land and damage from it, don't count on an automatic victory with support in the law, especially if the loss wasn't caused by excavation.

*Quinn v. Coulton* isn't new law, but it's made abundantly clear what the law is, clarified the ambiguity that exists between excavation and other reasons for the loss, and set out signposts for anyone suffering this harm. Plan on preparing your case as a negligence case, not a strict liability one. That ship has sailed.

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[1] *Quinn v. Coulton* . California First Appellate District Division 2, Case No. A172217 at 1- 2.

[2] *Quinn v. Coulton*, A172217, at Page 1.

[3] (Appellant's opening brief, *Quinn*, at page 019-020, citing *Wharam v. Investment Underwriters, Inc.* , (1943) 58 Cal.App.2d 346, 349).

[4] Civil Code Section 832.

[5] Quinn v. Coulton at Pages 9-10.

[6] Page 9 of Quinn opinion.

[7] Ibid., Page 10.

[8] CEB "Neighbors Views: Law and Litigation, Free Earth Movement: Landslide, Subsidence and Drainage at 3.12"

[9] Quinn v. Coulton Page 7.

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