



Rewilding in Italy

Liability to Neighbouring Landowners

*Red fox in old-growth beech forest, Central Apennines.
Bruno D'Amicis / Rewilding Europe*

Core topics

- Liabilities for damage caused to your neighbours by activities on your land

Key takeaways

- 1 You have a general duty not to negatively impact your neighbour's land or their enjoyment of that land. Where such an impact occurs, you may be required to pay compensation.
- 2 It is important to undertake risk assessments to understand how your activities may harm neighbouring land and what steps you can take to reduce such risk.
- 3 It is recommended to have comprehensive insurance in place to cover your land and the activities you undertake on it.

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1. Liability for damage to neighbouring property

The general position is that land holders may be required by law to refrain from or undertake certain actions in relation to their neighbours, with the aim of maintaining a balance in the case of conflicting rights between neighbouring lands. For example, there may be specific rules about the height, distance, etc., of trees, bodies of water, fences, or buildings, as well as access to roads, which you should check for if such features or structures are within close proximity of neighbouring property.

The principles of tortious liability (see *Rewilding in Italy: Third-Party Liability*) can be applied to cases where damage is caused to persons or property on neighbouring land. If all requirements for liability are met, then any damage to neighbouring land may give rise to liability and a claim for compensation.

Example 1

A tree belonging to Landowner A falls and destroys a wall on neighbouring land and a few fruit trees (such fruits were to be sold at a local market). The roots of a different tree also belonging to Landowner A destroy a wall on neighbouring land.

In both cases, unless he can show that the damage was caused by unforeseeable events, Landowner A is likely to be liable for the damage caused, meaning that compensation may be payable to the neighbour. This is because Landowner A is the custodian of the tree on their land, as they have control over it and can prevent it from causing damage.

Example 2

Landowner B cuts the fence of a neighbour without their permission.

In this case, Landowner B will be held liable for having caused wrongful damage to a property belonging to their neighbour through negligent or intentional conduct.¹

Example 3

Landowner C is building a badger lookout and uses the neighbour's land to store the construction material overnight without the neighbour's consent.

In this case, Landowner C could be held liable if their conduct caused damage to the neighbour's land.²

Example 4

The only access to the neighbouring fields is through Landowner D's land.

Landowner D is trying to exclude all human interference with the land and prevents the neighbour from doing their annual harvest and selling the produce.

Where land is surrounded by others' land and does not have any direct access to public roads, the owner/holder of that land has a right of way over neighbouring land for the cultivation and convenient use of his land.³ In this case, should Landowner D refuse to grant his neighbour access to their property, the neighbour can (i) request that their right of way be recognised; (ii) request that Landowner D cease all possible hindrances and disturbances; and (iii) demand compensation for damages.

For more information on rights of way, please refer to [*Rewilding in Italy: Public Access & Restrictions*](#).

Example 5

As part of Landowner E's large rewilding project, a river is to be allowed to regain its natural floodplain. To that end, Landowner E refrains from maintaining banks and river defences. During a subsequent period of high rainfall neighbouring land bordering the river is flooded, damaging a property. Over time the river also begins to erode neighbouring land overlooking the river, parts of which begin to break off into the river and are no longer safe for grazing.

Note that most bodies of water in Italy are the property of the Italian state.

According to a recent judgment, if the administrative authority granted the management of the embankments to a private party, although the ownership of the river remains with the State, duty of custody has been passed to the private party who manages the land, and they may be liable for any damage. Therefore, if Landowner E assumed management and maintenance of the land through a contractual agreement with local government, liability may arise in the event of damage to neighbouring property pursuant to Art. 2051 of the Civil Code.⁴

However, if the management of the embankments were not entrusted to private individuals, the responsibility for management would lie with the regional authority that must ensure public safety. Under these circumstances, the local government authority responsible for managing and maintaining the embankment may be liable under Art. 2051 of the Civil Code.

In both cases, liability may arise only where all the elements of tort liability (see [*Rewilding in Italy: Third-Party Liability*](#)) are established.



*Italian Dormouse/Hazelmouse, Lazio.
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Endnotes

- 1 Art. 2043 of the Civil Code.
- 2 Art. 2043 of the Civil Code.
- 3 Art. 1051 of the Civil Code.
- 4 The Italian Supreme Court has recently confirmed that an entity that owns and/or effectively controls and manages a drainage canal (including a consorzio di bonifica) may qualify as the “custodian” of that watercourse for the purposes of Article 2051 of the Italian Civil Code, and may therefore be held strictly liable for flood damage caused by the canal’s overflow unless it proves a fortuitous event. The Court also reiterated that any alleged contributory fault of the damaged party (e.g., circumstances said to exclude or reduce liability) operates as a fact limiting/excluding the right to compensation and must be proven by the custodian (cfr. Italian Supreme Court, 23 March 2024, no. 7926).

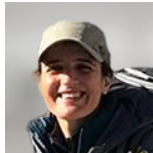
Contact Us

More information about rewilding and the issues addressed in this guidance note is available on [The Lifescape Project](#) and [Rewilding Europe](#) websites.

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