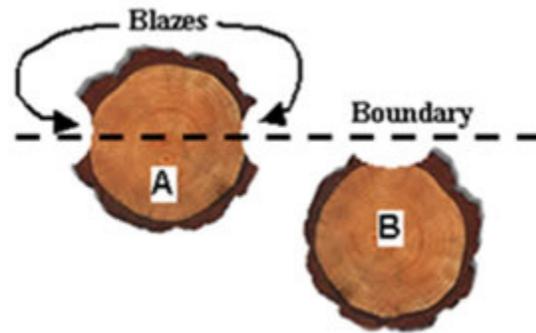


BOUNDARY LINE TREES



KEEP IT CIVIL

Corpus Juris Secundum (“C.J.S.”) Adjoining Landowners, section 65 (B)



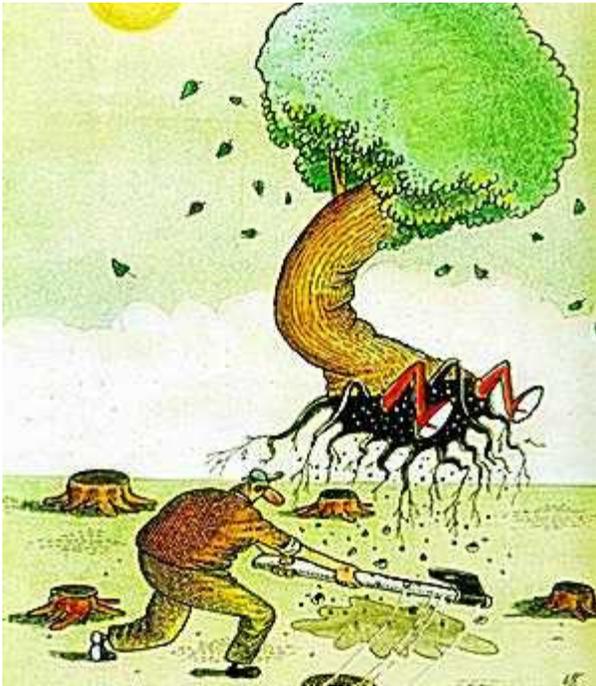
Under the common law and statutes, a hedge or tree on the boundary line between adjoining lands, regardless of whether or not it is marked as a boundary, is the common property of the adjoining owners.

C.J.S. - Adjoining Landowners, section 66



- Each owner of adjoining land may trim on his or her own side, trees and plants standing on the boundary line, **provided he or she does so without unreasonable injury** to the interest of his or her neighbor but must not without permission trim on the side of the neighbor, or inflict unreasonable injury on, or destroy, the common property

C.J.S. - Adjoining Landowners, section 67 Injury or Destruction - Actions



If one adjoining owner removes or destroys a tree or plant standing on the boundary line, without the consent of the other, the latter may maintain an action for damages.

However . . .



Treble damages under a civil action might not be recovered under a statute permitting them for the cutting of trees on the land of another (see Wis. Stats. s. 26.09), **for the injured owner is not the exclusive owner.**

Under Wis. Stats. s. 26.05(2)

“No person may cut, remove or transport raw forest products or direct the cutting, removal or transportation of raw forest products without the consent of the owner.



Things to consider when contemplating a border tree timber theft charge:

- 1) Certified survey line an absolute requirement to even think about starting.
- 2) Was there warning in advance (active or constructive) on the location of the boundary.
- 3) Value of the border trees involved



ROOTS

Right to self-help to remove intruding branches or roots
C.J.S. Adjoining Landowners, section 62 (2007)



- A landowner may always, at his or her own expense, cut away to the landowner's property line, encroaching branches or roots of the adjoining owner's trees or other plant life. The landowner may do so without giving notice, unless he or she had previously encouraged the encroachment.



However, adjoining landowners do not have an absolute privilege to sever encroaching tree toots, and must act reasonably with regard to the rights of the owners



Conclusion



- 1) Unless you have a recent survey line, the best bet is to alert landowners that there may be some civil remedies for them, either under common law or statute, and that they can contact an attorney to find out what remedies are available to them
- 2) Even with a clear survey line and a cutter with prior warning of the border trees, there may be an argument that the timber theft statute would not apply, although there is not Wisconsin case law to support this defense.

Questions?

