

**An Analysis of Louisiana's Timber Theft Laws, Related
Statutes, and Associated Case Law, with Recommendations for Change**

by
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Abstract

Louisiana has two primary statutes that deal with timber theft and the related penalties. Both were enacted in 1992 as successor legislation to earlier statutes dealing with the subject of timber trespass. In recent years timber values in the south have, on average, risen substantially. Concurrently, timber theft has also greatly increased. Timber theft in Louisiana is a major problem. This has brought increased scrutiny to bear on the state's timber theft statutes, and how they relate to particular theft situations and to the question of damages. The courts have been actively involved in applying the theft law to various sets of facts. This paper presents an analysis of Louisiana's timber theft law and its genesis, coupled with an analysis of the applicable judicial history. Recommendations for improvement and modification in the law are made. These apply not only to Louisiana but also have implications for other states.

INTRODUCTION

Timber theft allegations often arise because of ownership disputes. Sometimes the parties involved are admittedly co-owners of both land and timber; sometimes they are co-owners of the timber only, as with boundary line trees; and sometimes one person owns the timber and another the land. At the other extreme is the person who removes timber without any right at all, that is timber owned by another. This person is called a trespasser. Most states have enacted specific statutes that deal with the latter situation. These laws are generally similar in scope but vary widely in detail. They and the related jurisprudence, however, are usually murky at best --- and more often silent --- with respect to theft situations involving co-owners.

CONCEPT OF TIMBER TRESPASS

The words "timber trespass" seem to conjure up a vicious and deliberate act whereby timber belonging to another is stolen. This is not necessarily so; it probably occurs considerably less than is usually thought. A person can be guilty of timber trespass even if he has an insured title to the trees and he has been advised by the best surveyor in the area that he is on the right property. Timber trespass is simply defined as the wrongful or erroneous taking of standing timber belonging to another.

The law does not presume intentional wrongdoing. Unless proven otherwise, the taking of trees owned by another will be assumed an unintentional act, one of innocent trespass. Nevertheless, damages in some amount will have to be paid.

Timber trespass becomes willful or malicious when the trespasser knows that he has no right to cut the trees but does so anyway. There can be a legitimate dispute as to whether trespass was innocent or malicious. This is often a matter of degree and may be difficult to define. It also depends largely on what was in the mind of the alleged trespasser; that person will almost always insist he intended no wrong.

DAMAGES

Standing timber is almost always considered to be real property. Some states define standing timber as personal property if it is subject to a contract for severance. Since a trespasser has no contract, standing timber in that case will virtually always be real property. Thus damages will be the same whether the trees are left lying on the ground or are removed by the trespasser.

In theory, damages should equal the stumpage (fair market) value of the trees taken. Strict adherence to this rule, however, would have the effect of forcing the owner to sell the trees in question at current stumpage value whether he would have wanted to or not. This obviously would be unfair.

To offset such unfairness, many --- if not most --- states have enacted laws calling for double or treble damages for timber trespass. Today these multiple damage statutes are of three types: (1) the trespass must be proven to be willful and malicious; (2) there need only be some showing of an element of willfulness --- i.e., the trespasser should have known that the trees belonged to another even though he did not; and (3) the trespasser is prima facie responsible

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for damages --- no showing of malice or willfulness is necessary. Some states use two or even all three of these concepts in their timber trespass laws – often with different penalties for each.

THE LOUISIANA LAW

The author is currently serving on a committee appointed by the Louisiana Commissioner of Agriculture and Forestry to review and analyze Louisiana's timber theft and related laws, and to recommend and draft needed changes for consideration by the legislature. The following discussion is associated with that effort.

Louisiana's basic timber trespass law was enacted in 1987 and amended in 1992. The law defines three types of timber trespass.

The first type is wilful and intentional trespass. The penalty is treble damages plus attorney fees. An example would be the situation where a timber company tried unsuccessfully to purchase timber rights and then proceeded to cut the timber anyway (*Thibodeaux v. Western World Insurance Company*, 391 So2d 24, 1980).

The second type is good faith trespass where the circumstances proved that the violator as a reasonable person should have been aware that his actions were without the owner's consent. The penalty here is also treble damages, but attorney fees can only be awarded if the trespasser fails to make payment within thirty days of demand. An example would be the situation where a logging company erroneously clearcut a pine plantation, relying on the wrong ownership information which was easily available (*Evans v. Bedsole Timber Company*, 521 So2d 837, 1988).

The third type, implied but not specifically set out in the law, is good faith trespass where the circumstances showed that the trespasser could not possibly have been aware that the trees belonged to another. The penalty is actual damages. An example would be the situation where a surveyor followed a fence line until it was no longer discernable, then used a compass to mark the boundary. He accidentally got off the real boundary, The court held that the act was not intentional and there was no negligence (*Jones v. Don Edwards Timber Company*, 516 So2d 1256, 1987).

Cases of First Impression – Two 1999 court decisions addressed questions of timber trespass not previously heard. The first held that the timber trespass law applies to persons contractually obligated to remove trees who then proceed to cut

trees that are not part of the contract. Treble damages were awarded because there was no clause in the contract to the contrary (*Saucier v. Bunkie Wood Products*, 3rd Circuit, 759 So2d 794). The second decision held that the treble damage portion of the statute applies to trees on residential lots. Damages are to be measured in terms of the diminished value to the lot. The court stated that neither the wording of the law nor its legislative history indicated that the law applies only to commercial timber operations (*Olsen v. Johnson*, 746 So2d 740).

Fire Damage – The courts have held that the Louisiana treble damage statute also applies to fire damage in standing timber. The law specifically uses the word “destroy” in addition to the words “cut, fell or remove”.

Other Remedies – The treble damage statute is not the exclusive remedy available. Damages in some cases have been allowed for mental anguish, costs of clean-up, diminished growth due to injury and lost growth.

SHORTCOMINGS IN THE LAW

Trees on the Ground -The current law is ambiguous as to whether it covers trees lying on the land as well as standing trees. This issue is currently in litigation. Regardless of how the litigation is resolved, it is recommended that the law be amended to specifically include trees already cut and lying on the land.

Written Authorization - The current law does not require written authorization of the owner. Verbal or implied authorization, if proven, will suffice. This often results in a “he said and I said” situation involving the word of one person against that of another. It is recommended that the law be specifically amended to require written consent from the timber owner.

Co-Owners – The current law is deficient in several respects with respect to co-owners. Before these are enumerated, a brief discussion of the concepts of co-ownership would be in order.

When two or more persons own undivided interests in land and timber, they are usually known in most states as either tenants in common or joint tenants. Each owns a specified percentage of the land and of each tree. None is entitled to exclusive control or possession of a particular tree or parcel of land. The ownership interest of a tenant in common goes, upon his death, to his heirs and/or legatees. At a joint tenant's death, the interest is divided among the surviving joint tenants. This is sometimes call joint tenancy with right of survivorship.

Co-owners have the right --- unless restricted by prior agreement --- to estovers. This is the right to cut trees for necessary purposes such as firewood and fence posts. This right is limited when the trees are few in number or are particularly valuable.

The courts have held that one co-owner can sell wood or timber without permission of the other co-owners if necessary to pay taxes, insurance, etc. or for necessary upkeep of the property. Other than these situations, the general rule is that a co-owner cannot harvest and sell timber without the concurrence of the other co-owners. If he does, he is liable for damages. The question in Louisiana is to what extent does the treble damages law apply?

CO-OWNERSHIP DEFICIENCIES

First Deficiency – It has been held by at least one district court in Louisiana that the language in the current law requiring “consent of the owner or legal possessor” means that, in the case of co-owners, only the consent of one co-owner is required because the term in the statute is singular, not plural. Thus, according to this decision, the concurrence of just one of the co-owners will release the trespasser from treble damage liability. It is recommended that the law be specifically amended to require the consent of all co-owners --- if the 80% rule, which will be discussed below, does not come into play.

Second Deficiency – Can one co-owner recover treble damages from another co-owner who sells timber without permission of all of the co-owners? The language of the statute refers to cutting, felling, removing, or causing to be cut, felled or removed, trees growing on the land of another. Thus a literal reading would preclude a cause of action. It is recommended that the law be amended to specifically apply to the described situation.

Examination of Ownership Records – The Louisiana courts have been divided on the duty of a trespasser to examine ownership records at the courthouse. Therefore it is recommended that a provision be added to the current statute to mandate that a prospective purchaser examine the real property conveyance and mortgage records in the Clerk of Court’s office to determine whether the trees in question are owned by more than one person. Failure to do so would be prima facie wilful and intentional action if a good faith examination of the records would have revealed multiple ownership interests --- and all the owners did not concur in the sale of the timber. Again, the 80% rule, to be discussed below, would be an exception.

THE 80 PERCENT RULE

The Louisiana statute referred to above, enacted in 1992, provides an exception to the general rule requiring consent of all co-owners. This law provides that a buyer may purchase standing timber from co-owners or co-heirs representing at least 80% of the ownership interests if he has determined who all the owners are, and has made a reasonable effort to contact those owners who have not consented, and --- if contacted --- has offered them the same terms as contracted for with the others,. Assuming that 80% of the ownership interests have consented, any co-owner who does not consent has no liability for the costs of the operation and shall receive the same price as the others. Further, the non-concurring owners are not liable for damages or injury claims arising from the operation. If a non-consenting co-owner fails or refuses to claim his (her) portion of the purchase price, the money is to be held in escrow by the purchaser. Failure to comply fully with these requirements is prima facie evidence of wilful intent to commit theft.

Weaknesses in the 80% Rule – The first weakness is that this statute does not apply to severed trees (logs) or fallen timber. This interpretation was upheld by one district court last year and affirmed on appeal. The facts were that one co-owner cut the trees himself and then sold the logs without notifying the other co-owners (*Sullivan v. Wallace, No. 33,387-CA, 3rd Circuit, 2000*). It is recommended that the law be specifically amended to apply to severed trees and fallen timber.

The second weakness is that the statute contains no treble damage provision. It is recommended that such a provision be added.

An additional recommendation is to amend the law to require examination of the real property records in the Clerk of Court’s office to identify all co-owners.

COMMUNITY PROPERTY ISSUES

There are two community property states in the south. These are Louisiana and Texas. Current Louisiana law requires both spouses to consent to the sale of immovable (real) property and to the sale of movable property registered in the names of both spouses. This law thus prevents the sale of community standing timber by one spouse without the consent of the other spouse. However, it does not prevent such a sale of severed timber, which is movable property, unless registered after being cut --- a highly unlikely occurrence.

In a recent court case, the husband cut the trees and sold the logs. The couple was separated and the wife was unaware of the sale. Neither the treble damages

statute nor the 80% statute could be used as remedies against the purchaser because these laws --- as discussed earlier --- do not apply to severed timber (*Sullivan v. Wallace, supra*). It is recommended that a simple change be made to the community property statutes requiring the consent of both spouses for the sale of severed timber that is community property.

PREMERCHANTABLE TIMBER

The treble damage statute is not limited to merchantable timber. It speaks in terms of "any trees" and speaks to damages in terms of fair market value. Thus it should apply to premerchantable trees. There are no court decisions on this point. The question that arises, however, is how to determine fair market value. Reported market transactions for premerchantable timber are few.

A conflicting statute to the treble damage law exists with respect to destruction by fire of young timber. Under this law, damages are calculated as the expenses of replanting and cultivation to the point of development at the time the fire occurred. No provision is made for lost growth. There are no reported court decisions concerning the statutory conflict between this law and the treble damages law. It is recommended that the former be stricken from the books.

CONCLUSION

Multiple damage statutes are not the only remedy for timber trespass. Both statutory law and the jurisprudence in most states, including Louisiana, allow timber owners to sue in conversion if they

waive their rights to trespass damages is discussed above.

In law, conversion is the unauthorized assumption and exercise of the right of ownership over personal property belonging to another --- an alteration of the property's condition --- an abridgement of an owner's rights. Since the legal wrong of conversion applies only to personal property, it cannot apply to standing timber which is real property. However, if the trespasser removes the logs, he is then guilty of conversion.

If trespass is malicious, the timber owner has the practical choice of proceeding under the state's penalty statute allowing double or treble stumpage value damages, or proceeding under conversion. Since it is usually difficult to prove maliciousness, proceeding under conversion theory may be the safer course. However, if the state statute permits double or treble damages in any event, it will likely be more prudent to proceed under that statute. Under conversion, only stumpage value plus subsequent profit realized by the trespasser would be recoverable --- and this, in many if not most cases, would be a lesser sum.

Another advantage of a suit in conversion is the ease with which the buyer of the logs can be brought into the case. A suit under trespass normally lies only against the trespasser. Not all states recognize conversion suits stemming from timber trespass. A few restrict damages to a multiple of stumpage value.