

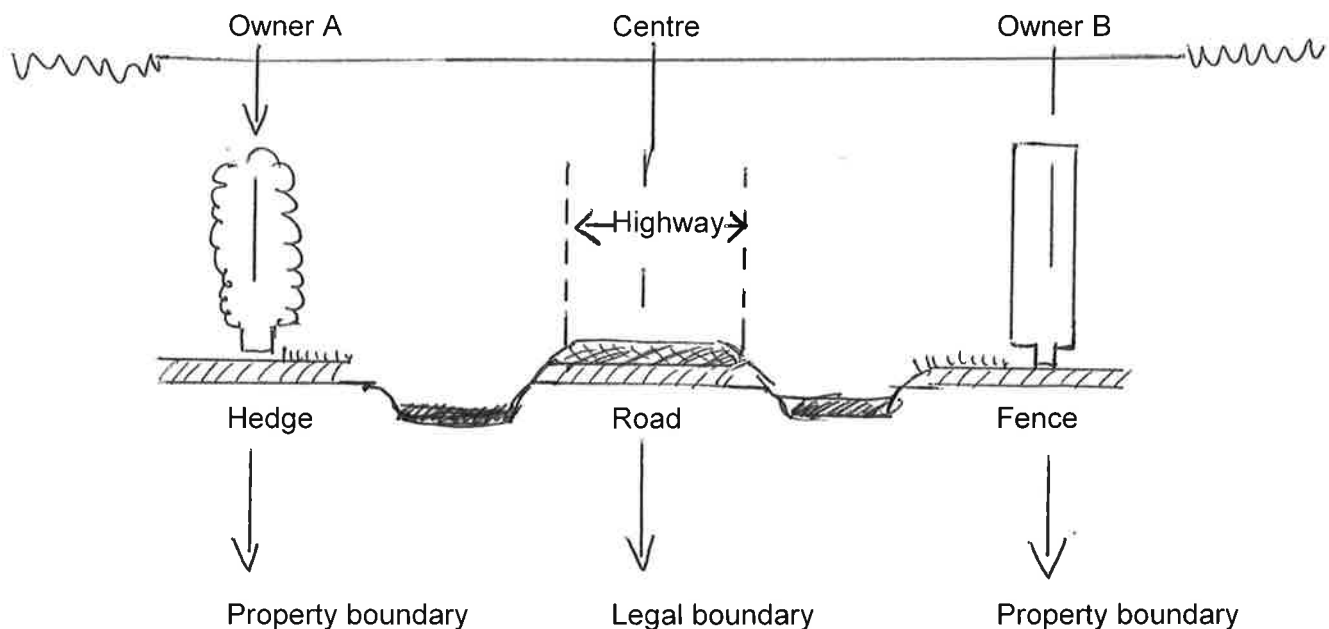
## Presumption in the case of a Highway – Ditches

Following the circulation of the ditch letters we have received several queries about ditch ownership – the following may help in clarifying this.

### Halsbury's Laws of England Vol 4 1973

850. Presumption in case of Highway – Where land is bounded by a highway, or a private right of way, the boundary is, as a general rule, a line drawn along the middle of the highway, or way, for the owners of land adjoining the highway or way are presumed, in the absence of any evidence to the contrary, to own the soil as far as the middle of the road, and all above the soil subject only to the right of passage over the surface. The mere fact that a conveyance describes land as being bounded by a highway, or that measurements or a plan by reference to which land is conveyed exclude any part of the highway will not rebut the presumption, for it would be absurd to suppose that the grantor retained the soil of the highway, which in nearly every case would be wholly valueless. The presumption applies under the general boundaries rule in the case of registered land, but it is not the practice of the Land Registry to show the half-width of the highway as being within the title.

The presumption obtains also where the land was formerly of copyhold tenure and in the case of leaseholders.



Both owners own to the road/track centre line. Their deeds will show their property boundaries marked in red as being the limit of their land but this is not their legal boundary. The legal boundary is the centre line of the road.

If gold was found under the highway on either side then A or B would be the rightful owner.

This is because the highway authority "Adopt" the highway surface to enable enough depth to maintain that surface.

This position comes from Lord Denning who as Master of the Rolls said this... or at least something like it.

"To be considered as "Highway" and maintained at public expense, a road must be capable of being passed and re-passed by members of the public".

Clearly people won't walk over the ditches so they are not part of the highway.

They must therefore remain the responsibility of either A or B, because they own to the centre of the line.

In theory: The Highway Authority should have their permission to work on the ditches but in reality we seldom do and this leads to private owners considering we are responsible.

We can use the Land Drainage Act 1991 Section 25 to direct ditch owners to maintain their ditches but a kind word is often better and more productive.