

HUNTING LEASES

Alabama Forest Owners Association Field Trip

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By Hayes D. Brown , Attorney at Law

(205)879-9220

1. WHAT IS IT?

- a. Deed? (“Grant, bargain sell and convey”)
- b. Lease? (Lease and let ”)
- c. Easement? (grant a right of ingress and egress across...)
- d. *Profit a’ prendre* ? (“ Grant to Hunter a right to enter upon the lands of Owner for the purpose of hunting wild game”)
- e. License? (“the right to use..”)

2. WHAT SHOULD IT BE?

The Supreme Court of Alabama has recognized a grant of hunting rights as a *profit a’ prendre* [pro-fed’ a pon’-re]: A right exercised by one man to take from the soil of another and carries with it the right to enter and remove the products designated.

Differs from a **deed** because it does not part with title.

Differs from a **lease** because it does not part with possession.

Differs from an **easement** because it includes the right to take.

Differs from a **mere license** because it is generally not revocable at will.

Closely compared to a **license coupled with an interest**. (not revocable at will).

3. WHAT SHOULD IT INCLUDE?

- a. granting language
- b. period of time
- c. fee paid in advance
- d. disclose timber growing intentions
- e. reserve all rights otherwise
- f. improvements, food plots
- g. damage to trees, nails
- h. attorney’s fees for breach
- i. if breach no refund
- j. joint and several liability
- k. all individuals sign or guarantee
- l. repair roads
- m. close gates, post signs
- n. no trash, no fires, cost of suppression
- o. indemnity, but no control
- p. insurance
- q. land is suitable, warn of hidden danger
- r. remove all improvements at end
- s. non assignable
- t. a *profit a’ prendre* is a property right and must be in writing
- u. will be interpreted under contract law

Alabama Statutes

Title 6. CIVIL PRACTICE

Chapter 5. ACTIONS

Article 18. Exemptions from Liability

Current through 2012-480 of the 2012 Regular Legislative Session

§ 6-5-345. Duty of care that owed to trespassers

(a) For the purpose of this section, the following words have the following meanings:

(1) POSSESSOR OF REAL PROPERTY OR POSSESSOR. The owner, lessee, renter, or other lawful occupant of real property.

(2) TRESPASSER. A person who goes upon the premises of another without permission or invitation, expressed or implied, or who, after rightfully entering upon the premises of another, remains on the premises after consent or license to enter or use the premises has been terminated.

(b) 1) A possessor of real property owes no duty of care to a trespasser except to:

a. Refrain from causing wanton or intentional injury, including by a trap or pitfall.

b. Exercise reasonable care to avoid causing injury to a known trespasser in a position of peril and to use reasonable care to warn a known trespasser of dangers known by the possessor to exist on the property.

c. Exercise reasonable diligence to warn a trespasser of dangers known after discovery that the trespasser is in a position of peril after the possessor has knowledge of the presence of the trespasser.

d. Exercise reasonable care to warn a known trespasser of dangers known by the possessor to exist on the property after the possessor becomes aware of the danger to the trespasser. Nothing in this section shall diminish, change, amend, or otherwise affect the open and obvious doctrine.

(2) A possessor of real property, however, may cause injury or use force to prevent or terminate a trespass as permitted at common law or in Title 13A, Chapter 3, Article 2.

(c) Notwithstanding the provisions of subsection (b), a possessor of real property may be subject to liability for physical injury or death to a child trespasser caused by an artificial condition upon the real property of the

possessor, if all of the following apply:

(1) The place where the condition existed is one upon which the possessor knew or had reason to know that a child would be likely to trespass.

(2) The condition is one of which the possessor knew or had reason to know and which the possessor realized or should have realized would involve an unreasonable risk of death or serious bodily harm to a child.

(3) The injured child, because of his or her youth, did not discover the condition or realize the risk involved in intermeddling with the condition or in coming within the area made dangerous by it.

(4) The utility to the possessor of maintaining the condition and the burden of eliminating the danger was slight as compared with the risk to the child.

(5) The possessor failed to exercise reasonable care to eliminate the danger or otherwise to protect the child.

(d) Notwithstanding the provisions of subsection (c), the duty owed by the possessor of real property to a child trespasser with respect to a natural condition is the same as that owed in subsection (b).

(e) The intent of the Legislature in enacting this section is to reject the adoption of the Third Restatement of Torts with respect to the duty of a possessor of real property to a trespasser. Nothing in this section shall diminish, change, amend, or otherwise affect the provisions of Sections 35-15-1 through 35-15-40, Code of Alabama 1975.

Cite as ALA. CODE § 6-5-345 (1975)

History. Added by Act 2012-300, §1, eff. 5/8/2012.

Definitions

Duty to Trespasser

Attractive Nuisance

Alabama Statutes

Title 13A. CRIMINAL CODE

Chapter 3. DEFENSES

Article 2. Justification and Excuse

Current through 2012-480 of the 2012 Regular Legislative Session

§ 13A-3-23. Use of force in defense of a person

(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (4), if the person reasonably believes that another person is:

- (1) Using or about to use unlawful deadly physical force.
- (2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling.
- (3) Committing or about to commit a kidnapping in any degree, assault in the first or second degree, burglary in any degree, robbery in any degree, forcible rape, or forcible sodomy.
- (4) In the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered, a dwelling, residence, or occupied vehicle, or federally licensed nuclear power facility, or is in the process of sabotaging or attempting to sabotage a federally licensed nuclear power facility, or is attempting to remove, or has forcefully removed, a person against his or her will from any dwelling, residence, or occupied vehicle when the person has a legal right to be there, and provided that the person using the deadly physical force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring. The legal presumption that a person using deadly physical force is justified to do so pursuant to this subdivision does not apply if:

a. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order

of no contact against that person;

b. The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;

c. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

d. The person against whom the defensive force is used is a law enforcement officer acting in the performance of his or her official duties.

(b) A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground.

(c) Notwithstanding the provisions of subsection (a), a person is not justified in using physical force if:

(1) With intent to cause physical injury or death to another person, he or she provoked the use of unlawful physical force by such other person.

(2) He or she was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force.

(3) The physical force involved was the product of a combat by agreement not specifically authorized by law.

(d) A person who uses force, including deadly physical force, as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.

(e) A law enforcement agency may use standard procedures for investigating the use of force described in subsection (a), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force used was unlawful.

Cite as ALA. CODE § 13A-3-23 (1975)

History. Acts 1977, No. 607, p. 812, §610; Acts 1979, No. 79-599, p. 1060, §1; Act 2006-303, p. 638, §1.

How to recognize Criminal Trespass:

As is common in many criminal statutes, Trespass is divided into 1st, 2nd and 3rd degrees in descending order of severity. We can rule out 1st degree off the bat because it involves entering into a dwelling. So, let's look at Trespass in the 2nd and 3rd degrees:

13A-7-3 Criminal trespass in the second degree

- (a) A person is guilty of criminal trespass in the second degree if he *knowingly enters or remains* unlawfully in a building or upon real property which is fenced or otherwise enclosed in manner designed to exclude intruders.
- (b) Criminal trespass in the second degree is a Class C misdemeanor.

13A-7-3 Criminal trespass in the third degree

- (a) A person is guilty of criminal trespass in the third degree when he *knowingly enters or remains* unlawfully in or upon the premises.
- (b) Criminal trespass in the third degree is a violation.

Criminal Trespass in the 2nd degree is a Class C misdemeanor punishable by imprisonment lasting not more than 3 months and a \$500.00 fine. Ala. Code Section 13A-7-3 provides that: "A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in a building or upon real property *which is fenced or enclosed in a manner designed to exclude intruders.*"

Criminal Trespass in the 3rd degree is a violation punishable by imprisonment lasting not more than 30 days and a \$200.00 fine. Ala. Code Section 13A-7-4(a) states: "A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in or upon premises." To prove this violation one does not have to prove that the property was fenced or enclosed.

Both degrees require that one "knowingly enter and remain without permission." It must be proven that the intruder knew he was on the victim's property without his permission. This is not presumed.

Civil trespassing does not call for criminal sanctions. If the owner wishes the support of the criminal law, he should "post" the land in a conspicuous manner. Placing no trespassing signs a sufficient distance apart along the entire boundary so that an outsider could read one sign from the other sign may be necessary in order to constitute placing notices in a conspicuous manner.