

# Implications

of

Game & Fish

**Laws**

in

Alabama

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*Information contained herein is available to all persons without regard to race, color, sex, or national origin.*

# **IMPLICATIONS of GAME and FISH LAWS in ALABAMA**

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## **INTRODUCTION**

**T**HE AVERAGE Alabama worker today has more leisure time to pursue outdoor sporting recreation than his forefathers did. Furthermore, many Alabamians are engaged in outdoor recreational activities such as hunting and fishing on private farms or as members of organized clubs. These factors have combined to create an increasing demand for the use of land in these outdoor pursuits (2).

Alabama farmers occupy an unique position regarding outdoor recreational lands and the state's wildlife resources. A substantial percentage of Alabama's game birds and animals have habitats on privately-owned farmland (3). Also, privately-owned farm ponds and lakes comprise a significant portion of the state's fresh water fish resources (2). Therefore, as the demand for outdoor recreation increases, the Alabama landowner becomes the focal point of this clamor for hunting and fishing rights. This publication will identify some of the important legal aspects of hunting and fishing rights and consider their implications for Alabama farmers.

## **GAME AND HUNTING RIGHTS AND REGULATIONS**

Under English common law, all wildlife belonged to the crown. This ownership was held in trust for the benefit of all the people. The English government, as trustee for the people, exercised its power to protect, control, and regulate the taking of game and fish. This attribute of government ownership of wild animals was introduced into the Colonies and remains in effect today in all states including Alabama (4).

The title and ownership of all wild birds and wild animals in the State of Alabama are vested in the State for the purpose of

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regulating the use and disposition of said wildlife in accordance with the laws of the state (27). The U.S. Supreme Court has sanctioned Alabama law by ruling that the states have the power to prohibit or regulate the taking and acquisition of wild animals by individuals and the property rights that might be acquired therein (53). Although the State of Alabama specifically reserves title and ownership of all wild birds and wild animals in the State, it is recognized by statute that the landowner has the exclusive right to hunt and kill wild animals on his property (31).

Since the State is by law the owner of all game, it has the right to regulate the conditions under which such animals can be taken. One of the State's principal tools of regulation is the hunting license. The issuing of licenses gives the State's Department of Conservation a means of controlling hunting and of conditioning the right. Therefore, the Code provides that before anyone is entitled to hunt in Alabama, a hunting license must first be obtained (11).

However, Alabama law recognizes that farmers and their families are in a special position regarding the taking of game. Accordingly, the Code stipulates that any landowner or member of his immediate family may hunt on lands owned and resided on by the landowner without the necessity of having to buy a hunting license. The same statute also provides that any farm tenant or member of his immediate family may hunt without a license on any leased or rented property upon which the tenant resides (11). This right to hunt without a license does not, however, allow farmers or their families to disregard pertinent game laws and regulations. Furthermore, if the farmer or any family member hunts on an adjoining farm or anywhere else in Alabama, he must purchase a hunting license.

In the event a farmer invites friends or relatives who are not immediate family to hunt on his farm, they, like other hunters, must acquire a hunting license. If the guests are from out-of-state, they must obtain a non-resident hunting license. They have the option of purchasing a "trip" license covering a period of 7 days, or a "season" non-resident license. Also, different non-resident hunting licenses can be purchased for small game only or one for large and one for small game (12).

There is one important exception to the hunting license laws. Any State resident who has not yet reached the age of 16, or any Alabamian above the age of 65, is not required to have a

license to hunt in Alabama. Any other persons hunting in the State, who are not hunting on their own or rented farm land, are legally required to have a hunting license in their possession. Any hunter failing to have a license is guilty of misdemeanor and, upon conviction, can be fined from \$10 to \$25 for each offense (13). Alabama law also requires anyone training a dog for hunting or field trial purposes, and receiving remuneration for same, must obtain a dog trainer's license. Violation of this statute is also a misdemeanor (14).

Numerous Alabama statutes grant the State Department of Conservation and Natural Resources the right to determine annually the seasons during which various kinds of game can be taken; to establish daily and total limits; to specify sizes and sexes which may be legally taken; to confine hunting to certain hours of the day; to define illegal means of taking game; and to prescribe other regulations which will protect wildlife or promote safety among hunters. It is important for farm owners and operators to realize that in spite of their exclusive right to hunt game on their property, they must take this game within the laws and regulations established by the State. Otherwise, farmers will be subject to the same penalties as non-landowning violators.

A regulation of this type affecting farmers involves the sale of game. Notwithstanding the landowner's exclusive right to take game by legal methods on his farm, state law limits the disposition of such game. The Alabama Code makes it a misdemeanor to purchase, sell, barter, or exchange anything of value for any game bird or animal, or any parts thereof. Violators of this statute are subject to fines of \$25 to \$50 for each offense (29). This law refers specifically to the carcasses of dead animals already collected by a hunter and is not to be confused with the "right" to hunt game. Hunting rights, as vested by law in the landowner, are freely transferable and negotiable (51).

Title 9, Section 11-236 of the Code, declares hunting out of season to be a misdemeanor punishable by fine of \$50 to \$500 (28). This provision applies equally to persons hunting out of season on their own land or on the land of another. Nevertheless, the Code does allow an important exception to this law which is of tremendous significance to farmers. While under no circumstances condoning the killing of game out of season for food or sport, Alabama law recognizes that farmers have a right to protect their crops from damage by wild birds or

animals. The Director of the Department of Conservation is thus empowered to relax game laws to protect a farmer's crop. With the consent of the Conservation Department, game animals may legally be killed out of season to halt destruction of agricultural crops. In Alabama, widespread animal damage to crops is done by deer. The Department of conservation may lift protection for doe deer and even open the season on such deer with the approval of the landowner or leaseholder (30).

### **TRAPPING LAWS**

A valuable asset of Alabama's vast wildlife resources is abundant population of furbearing animals. As is the case with game animals, Alabama farmers also own or hold most of the habitat for furbearing animals (3). Therefore, farm owners and operators control most of the State's prime trapping lands.

Just as the Alabama Code bestows the exclusive right to the landowner to hunt game animals, it likewise endows the farmer-landowner with the same exclusive right to harvest, by trapping, any furbearing animals found on his property. The Code also protects this right of the landowner to reap the fur resources from his land by making it a misdemeanor punishable by fine from \$1 to \$100 to trap on the lands of another without permission(32). In addition, Section 11-243 makes it a \$10 to \$50 offense to trap without permission, any furbearing animal, within 10 feet of the bank of any river, creek, pond, or lake which touches the land of another (33). Therefore, the farmer's exclusive trapping rights not only encompass all his property, but also extend 10 feet into any body of water that touches his land.

Any person who traps furbearing animals for commercial purposes is required by law to first obtain a trapping license. This provision applies whether the trapper is a farmer-landowner trapping on his own farm, or a non-farmer trapping on the land of another. A separate license is required for residents and non-residents, and a trapping license is only valid during the season when furbearing animals may legally be taken. Any individual committing a trapping license violation is guilty of a misdemeanor and subject to fines of \$50 to \$200 for each offense (17).

One fur-bearing animal in Alabama, the beaver, has propagated to the extent that it has become a common farm nuisance. Therefore, to aid in the control of this damaging pest, the trapping license law makes an exception for beaver trappers.

Neither residents nor non-residents are required to pay a license fee when trapping for beavers only (18). Furthermore, in areas where beaver damage becomes extensive, State law affords farmers additional relief. The Code grants the Director of Alabama Department of Conservation and Natural Resources the power to open the season and to pay a \$5 bounty for each beaver killed in any county or area of the State where serious damage is occurring (36).

The State's Department of Conservation is empowered to manage and conserve furbearing animals for the benefit of all Alabamians. In this capacity, in addition to administering licensing regulations, the Department of conservation also specifies the seasons during which furbearing animals may be trapped; the species of animals which may be trapped; legal methods of trapping animals; and other conservation or protective regulations. Thus, even while recognizing the landowner's exclusive right to trap animals on his property, Alabama law regulates the exercise of this exclusive right.

Alabama's fur-trapping regulations do not stop when the animal has been killed and is in the possession of the trapper. The Code, through several statutes, regulates the disposition of any furbearing animals harvested in the State. Section 11-237 of Title 9 grants licensed trappers the right to sell the carcass of any edible furbearing animal taken by legal means (29). This is the only circumstance under which any wild animal carcass may be legally sold in Alabama. Transporting furs out of State without paying state tax is an offense punishable by a fine of \$50 to \$500 (34). This provision specifies that the State considers the status of furs to be the same as any other farm commodity and thus subject to State taxes. A licensed fur trapper is entitled to sell his own catch to any buyer he chooses. However, any individual acting as a "middleman" and buying or selling furs which he did not take himself, is required by law to purchase a fur dealer's license. Buying or selling furs in Alabama without a license is a misdemeanor punishable by fine of \$50 to \$300 for each offense (19).

Alabama law has historically attached great significance to exclusive ownership and use of private property. Along with this ownership right, the law has always included the exclusive right of landowners to utilize the wildlife resources found on their property. However, because ownership of all wildlife is vested in the State for the benefit of all Alabamians, landowners are limited in how they may utilize wild birds and

animals found on their land. A farmer-landowner is entitled to employ any wildlife resources found on his farm for economic benefit or for his own personal pleasure, as long as he does so within the game laws of the State. These laws restrict landowners from abusing their exclusive right to hunt and trap, and thus help prevent damage to the natural balance of the farm's wildlife population. Hunting and trapping laws not only help preserve the State's wildlife for all Alabamians, but also help ensure that future generations of both landowners and non-landowners will continue to benefit from this State's vast wildlife resources.

## **FISHING RIGHTS AND REGULATIONS**

The State of Alabama's abundant streams, rivers, ponds, and lakes comprise nearly 1 million surface acres of fresh water. A significant portion of these bodies of water are contained within or bordered by privately-owned farmland (2). Therefore, laws dealing with fishing rights and recreational water usage are of considerable importance to Alabama farmers. For legal clarification, all bodies of water in Alabama are classified either as public waters or private waters. The fishing rights in each type of water vary and will, therefore, be considered separately.

### **Public Waters**

Any water in Alabama, whether it be a natural or man-made body, is declared to be public water if such water bounds, touches, flows upon or through, lands owned by more than one person, company, or corporation. Furthermore, any water impounded by a public utility or governmental unit by placing a dam across a major river is also public water (20).

An additional legal distinction is made in Alabama between public water which is navigable and that which is non-navigable. A navigable body of water is "capable of being used for profitable purposes of navigation; of trade and travel in the ordinary modes" (62). Therefore, any body of public water with sufficient width and depth for normal commerce, and which is free of insurmountable obstructions, is navigable water (59). It is the "capacity" for commercial navigation and not the frequency of actual commerce, which legally classifies a body of water as navigable (62).

Regardless of whether a body of public water is navigable or non-navigable, the title to ownership of the fish found in the



water is vested in the State of Alabama. The Alabama Code grants ownership of all fish found in public waters to the State for the purpose of regulating their conservation and disposition (21). Even though the State holds all public water fish in “trust” for the benefit of all Alabamians, who has the right to take these fish varies between navigable and non-navigable waters.

Public-navigable waters are public thoroughfares and the general populace is entitled to access to these waters for fishing or any other recreational purposes (45). The only legal restriction placed on the public’s entrance and use of public-navigable waters is that no one may, without permission, enter or cross privately-owned land to gain access to the water. Therefore, the general public has the same right as owners of shoreline property to take fish from public-navigable waters, provided no one may trespass upon posted land to exercise this fishing right (20).

Public non-navigable waters are not public thoroughfares and the general public does not have the right to take fish from these waters. Owners of land upon which non-navigable public waters flow or lie, are entitled to exclusive fishing rights from their bank to the center of the main channel (8). Thus, Alabama law extends the principle of exclusive ownership of land to include the exclusive right of landowners to take fish from non-navigable public waters which touch their property.

Any individual who fishes in public water in Alabama, whether the water is navigable or non-navigable, is required by law to first purchase a State fishing license (9). There is a separate license required for residents and nonresidents, and nonresidents have the option of purchasing a “trip” license valid for 7 days or an annual nonresident license effective for a full year (16). Persons fishing with an ordinary hook and line (“cane pole fishing”) in their county of residence, or within 1 mile of their resident county boundary line, are not required to have a fishing license. The only other exceptions allowed by the license laws are for State residents under 16 years of age or over 65. Alabamians in either of these two categories may fish in public water without having to procure a fishing license (15). Any person violating a fishing license law is guilty of a misdemeanor and subject to fines of \$10 to \$25 for each offense (15). It is important for farmer-landowners to realize that in spite of their exclusive right to catch fish in non-navigable public streams on their property, they still must first obtain a

fishing license to legally take these fish if fishing with any equipment other than an ordinary cane pole.

As the legal owner and guardian of all public water fish, the State of Alabama has the authority to regulate through its Department of Conservation, the taking and disposition of all fish found in public waters. In this regulatory capacity, the Department of Conservation designates which fish are protected by law; legal methods of taking fish; minimum sizes and maximum numbers of fish which may be taken; and many other regulations which protect fish or promote safety among fishermen. Farm-landowners, like all other individuals fishing in public water, are legally obligated to abide by these various regulations whether the public water is located on their farm or elsewhere.

There are several fishing-law regulations of particular significance to farmers. One involves the movements of fish in streams. It is illegal for anyone to prevent or obstruct the passage of fish in a creek or river by means of a trap or any other device. However, a farmer-landowner may dam a non-navigable stream to form an impoundment for irrigation, fish production, or any other lawful endeavor, without violating this statute (25). A similar law makes it illegal to take fish from public streams by use of poisons, explosives, or electrical devices (26). Finally, even if game fish are taken from public water by legal means, the law limits how they may be disposed if once caught. The Alabama Code declares the sale of game fish taken from public water to be a misdemeanor punishable by a fine of from \$200 to \$500 for each offense (22).

### **Private Waters**

Any water in Alabama wholly on lands owned or leased by one entity, a person, company, or corporation, is legally classified as private water. Private waters include any impoundments formed by damming non-navigable streams so long as the impoundment is contained with land owned by one entity (20).

Private waters are the real property of the owner of the land upon which they lie. The fish contained in private waters thus belong to the landowner and not the State of Alabama. Therefore, Alabama law places few restrictions on a farmer-landowner's use of his private water fish. The farmer-landowner may catch or harvest private water fish by any

method he desires, including methods which would be illegal in public water (23). Furthermore, a farmer-landowner or any member of his immediate family, may fish in their private water without having to purchase a fishing license. This license exemption is also extended to farm-tenants and their immediate families when fishing in private water contained on the rented property upon which they reside (15).

Alabama law does restrict the disposition of fish taken from private water. Game fish caught or taken from private water may not be sold, resold, purchased, or transported (22).

An owner of private water in Alabama is recognized to have an absolute ownership right to any fish contained in the water. Alabama law therefore makes it a misdemeanor to take, catch, or kill, or attempt to do so by any method, fish from private waters without permission (23). In recent years, Alabama has witnessed an increase in the farm enterprise of fish cultivation and production. Fish farmers have protection against fish poachers. Alabama Code provides that any person who steals fish which are grown, managed, and harvested as a cultivated crop is guilty of a misdemeanor and subject to a fine of not more than \$500 and imprisonment of up to 1 year. However, a farmer must place "No Trespassing" and warning signs near his water to prosecute a poacher under this law (40).

The fish contained in public water are the property of the State of Alabama and their use and disposition is controlled for the benefit of all Alabamians. However, Alabama law regards private waters and the fish therein as the private and exclusive property of landowners. Thus, the law places few controls on the owner's use and disposition of the fish found in his private water. Furthermore, the law protects the farmer-landowner's exclusive right to utilize his private water for recreation or profit by providing specific statutes which deter intrusion and poaching.

### **THE FARMER'S REMEDIES AGAINST TRESPASSING HUNTERS AND FISHERMEN**

Alabama law recognizes that the owners of land, private waters, and lands upon which non-navigable public streams flow have an exclusive right to the fish and wildlife found on their property. Therefore, the law provides numerous legal barriers to prevent unwanted intruders from infringing upon the landowner's exclusive right to utilize his fish and wildlife resources.

The Alabama Code makes it a misdemeanor to hunt or trap on the land of another without written permission (31). Likewise, as previously mentioned, the Code makes it a misdemeanor to fish in the private waters of another without written permission (23). Furthermore, the court's decision in *Birmingham vs. Lake* seems to subject an unauthorized fisherman in a non-navigable public stream to the same penalty as an intruder in private waters (7). These offenses carry maximum fines ranging from \$25 to \$500 depending on the circumstances surrounding the violation.

It should be noted that only the landowner or his duly authorized agent has the legal authority to grant the written permission to hunt or fish required by these statutes. In *Barclay vs. The State* the court upheld the conviction of the defendant (the hunter) under Section 11-241 of Title 9 even though he had the "tenant's" written permission to hunt or fish. This case is interpreted to mean that the person with title has the absolute right to give permission to hunt or fish as opposed to the one with a mere possessory right (5). This ruling assures a landowner that his exclusive right to hunt or fish on his property is not jeopardized by renting all or part of his land to a second party for an agricultural purpose.

Unauthorized hunters and fishermen, in addition to being liable under these "written permission laws," are also subject to prosecution under the trespass statutes. Depending on the circumstances, a farmer-landowner can prosecute an intruding hunter or fisherman for civil or criminal trespass or can obtain injunctive relief against future trespass.

It is evident that Alabama law provides farmer-landowners with several legal alternatives against intruding hunters or fishermen. Therefore, when a farmer discovers a hunter or fisherman on his property without permission, he has more than one course of action he can follow. First, the farmer can merely do nothing and allow the trespasser to continue hunting or fishing on his land. However, in this event the law interprets the farmer's acquiescence to the hunter or fisherman's presence as an "implied" consent to the intruder's activity. With this implied permission the intruder's status is thus changed from trespasser to licensee and the farmer's potential liability to the intruder is greatly increased (6). Hence, for obvious economic and legal reasons, a farmer should not ignore an unauthorized entrant's presence.

As a second alternative, the farmer can go before the local county judge or other magistrate and apply for a warrant of

arrest on the intruder. This option is available because the trespassing hunter or fisherman has committed one or more misdemeanors in the county. Alabama Code makes it a misdemeanor to fish or hunt on the lands of another without permission (24). Furthermore, if the intruder was warned to stay off the property within the last 6 months, or refused to leave on request, he is also guilty of trespass after warning, which is likewise a misdemeanor (39). The Code also states that any person who has probable cause for believing that a misdemeanor has been committed in a given county by a known person, may appear before a magistrate and make an affidavit on the fact (42). Therefore a farmer can take this action against an unauthorized hunter or fisherman. If the magistrate is then sufficiently convinced the misdemeanor has been committed, he will issue a warrant for the arrest of the hunter or fisherman (43).

It is evident that a farmer-landowner will not always be able to determine the identity of an intruder on his property. Therefore, the Alabama Code provides the farmer with an alternative course of action against trespassing hunters or fisherman, "a private person may arrest another for any public offense committed in his presence . . ." (44). An unauthorized fisherman or hunter is committing a misdemeanor, and the farmer is authorized to make a citizen's arrest upon discovery of trespassing hunters or fishermen. However, the farmer is strictly limited by law in how he may proceed to arrest and hold the intruder. Therefore a farmer-landowner should be well aware of the legalities involved with making a citizen's arrest before pursuing this course of action.

In apprehending the intruder, the landowner can use any "reasonable force" necessary to make the arrest. However, if the farmer-landowner uses more force than is necessary to make the arrest, he will be liable for assault and battery in civil court (60). Furthermore, if the hunter or fisherman should flee, the farmer must let him go because it is murder in Alabama for a private citizen (or police officer) to kill a misdemeanor-arrestee who flees, even though there is no other way to stop him (60).

Even if the farmer-landowner is able to persuade the hunter or fisherman to subject himself to arrest, the citizen's arrest route may still subject the farmer to civil liability for false arrest or false imprisonment if he fails to follow the statutory requirements regarding the apprehension and custody of the

intruder. First, the farmer-landowner can arrest the hunter or fisherman only if the offense is committed in his presence (41). Therefore the landowner must actually catch the hunter or fisherman while the intruder is actively hunting or fishing on the farm premises (47). Furthermore, the farmer-landowner is required to inform the person arrested of the cause for the arrest (44). In addition, the farmer must take the arrestee without unnecessary delay before a magistrate or officer of the law (44). If the farmer-landowner fails to comply with these statutory requirements the arrest and detention of the hunter or fisherman is unlawful and the farmer is liable for damages to the arrestee. Because of this high susceptibility to civil liability, use of the citizen's arrest is usually not a good alternative.

As a final and perhaps superior option, a farmer can request help from the local game warden in apprehending trespassing hunters or fishermen. The Commissioner of Conservation and Natural Resources and his wardens are peace officers of the State with full police power jurisdiction to enforce the game and fish laws anywhere in Alabama (10). There are numerous advantages to calling a game warden in to deal with intruding hunters or fishermen. The game warden is in uniform and a hunter or fisherman is likelier to submit to his arrest than if the farmer attempts to make the arrest. Furthermore, the farmer will be free to attend to his business while the game warden is attempting to catch the trespasser(s). Last, but not least, the best reason to seek the game warden's help is that if an unlawful arrest is made, the warden and not the farmer will be liable.

Up to this point it has been assumed that farmer-landowners retain their exclusive rights to hunt or fish on their property, and that any legal protection against intruding hunters or fishermen is provided exclusively for the landowner's benefit. However, many farmer-landowners in Alabama rent or lease the hunting and fishing rights on their property to groups or individuals (3). An early Alabama court decision established that the lessee of exclusive hunting rights is entitled to the same remedies against trespassing hunters as is the landowner (51). Alabama case law clarifies that the exclusive hunting and fishing rights inherent with property ownership are freely transferable; and furthermore, the legal protection against infringement upon these rights is transferred with the rights themselves.

Alabama law clearly affords farmer-landowners (and lessees of exclusive hunting and fishing rights) extensive protection against trespassing outdoorsmen. Various statutory provisions

provide the farmer with several legal options for ousting an uninvited hunter or fisherman. The best legal alternative for a farmer to pursue in a given situation depends on the nature of, and the circumstances surrounding, the invasion of his premises.

## **THE FARMER'S LIABILITIES TO HUNTERS AND FISHERMEN**

A farmer-landowner's potential liability to a hunter or fisherman on the farm premises depends on the legal status of the sportsman. All hunters and fishermen coming onto a farmer's land will fall into one of three legal classifications. The "duty of care" owed, as well as the farmer's potential liability, varies greatly between the classes. The three categories of entrants are trespasser, licensee, and invitee.

### **The Trespasser**

The Alabama Supreme Court has ruled that anyone entering on the property of another without express or implied authority is a trespasser (50). This case makes it clear that any unauthorized entrant on the farm premises is legally classified as a trespasser.

The farmer has very limited responsibility for a trespasser's safety. The only duty owed a trespasser by a landowner in Alabama is to refrain from setting a trap for the trespasser or intentionally injuring him once he is encountered on the premises (1). For a farmer to be liable to a trespasser for any injury resulting from a trap or pitfall on the farm, the farmer must have anticipated the trespasser and designed the trap or pitfall to purposely injure him (54). Once a trespasser is discovered, the landowner owes him a duty not to willfully harm him (49). However, the landowner is not required to warn the trespasser of any hidden dangers on the property and owes him no duty to keep the farm premises safe. The trespasser therefore assumes the risk of any dangers on the farm when he enters the property (58). Alabama courts protect the farmer from liability to a trespasser in all cases except where an injury is intentionally inflicted.

### **The Licensee**

The licensee is the second class of entrant. The licensee comes onto the property solely for his own benefit, pleasure, or convenience. However, unlike a trespasser, a licensee has

the owner's consent to enter and remain on the farm (55).

The "duty of care" the farmer owes the licensee is somewhat greater than that due the trespasser. Not only must the farmer refrain from intentionally injuring the licensee, but he is also legally obligated to make every reasonable effort to warn the licensee of any known hidden dangers on the property. However, if the dangerous condition is so open and obvious that the licensee can reasonably be expected to discover it on his own, the farmer has no duty to warn him (48). The landowner's duty to alert the licensee to unsafe conditions includes warning him of dangers existing when permission to enter the property was first granted, as well as warning him of any newly created hazards. In the *Wright vs. Alabama Power Company* case the court upheld the Fowler decision in which the court held that where a landowner who, through his positive or active negligence, created a trap or pitfall which would expose the licensee to a new danger, he owed a duty to the licensee to give him reasonable notice or warning of the new danger (65).

### **The Invitee**

The third classification of entrant is the invitee. Alabama law recognizes two tests in determining whether an entrant is an invitee (61). The first test is the "invitation test." Under this test, an entrant is an invitee if he is invited to enter or remain on the farm property as a member of the public for a purpose for which the property is held open to the public (64). The second test is the "economic benefit test." Alabama courts have defined an invitee under this test to be: "a person who comes thereon by the landowner's invitation, express or implied, for the transaction of business or for any other purpose beneficial to the landowner" (52). In other words, under the "economic benefit test," a person is an invitee if he has the farmer's permission to be there and is on the farm for the farmer's benefit, or for both the benefit of the farmer and himself.

The farmer has a greater responsibility for the invitee's safety than for either the licensee or the trespasser. The duty the landowner owes the invitee is to make every plausible effort to have the premises in a reasonably safe condition for "use in a manner consistent with the purpose of the invitation" (63). This responsibility to keep the farmer property safe is not absolute, but only requires the exercise of reasonable care (49).



The farmer also owes the invitee the same duty as the licensee to warn of any known hidden dangers on the property. Thus, the landowner must warn the invitee of hazards known to him and must also inspect the farmer premises to discover possible dangerous defects (56). If the hazardous condition is known to the invitee, or so obvious that he may reasonably be expected to discover it on his own, the farmer is relieved of his duty to warn. Also the landowner is required to exercise only "reasonable care" to locate defects on his property, and if the dangerous condition could not be discovered with reasonable care the landowner will not be held liable.

The revised Section 15 (1-5) of Title 35 of the Alabama Code places limitations on the liability of private landowners who open their lands to hunters or fishermen (46). Under this statute, hunters and fishermen coming onto the farm are still classified into one of the three legal categories just like all other entrants. However, the new statutes modify the definitions and the corresponding obligations to hunters and fishermen in two of the three categories.

Any individual hunting or fishing on the farm premises without permission is legally classified as a trespasser (50). Section 15 (1-5) applies only to hunters or fishermen who have been granted permission to hunt or fish on the farm property. Therefore, the new statutes are inapplicable to trespassers and do not change the liability to and duty owed a trespassing hunter or fisherman. The only duty of care a farmer owes a trespassing hunter or fisherman remains to refrain from intentionally injuring him. Only if the farmer purposely inflicts bodily injury to the trespasser will he encounter any liability (49).

A hunter or fisherman with the farmer-landowner's permission to hunt or fish on the farm property, or accompanied by the farmer, is a licensee if the farmer gratuitously granted the hunting or fishing privilege to him (55). A hunter or fisherman may also be classified as a licensee if the farmer has knowledge of his presence but takes no action to indicate that he wants the intruder to stay off his land. As discussed previously, the farmer's acquiescence in the hunter or fisherman's presence is interpreted as constituting an implied consent to the intruder's activity on the property (6).

Normally, a farmer owes a licensee the duty to warn him of any known hidden dangers on the farm property. If a farmer knows of a hazardous condition and fails to alert a licensee to

it, and the licensee is subsequently injured, the farmer would be liable to the licensee for the injury. However, under Section 15 (1-5) a farmer is not required to warn a hunter or fisherman, who is a licensee, of a dangerous condition on the farm unless his failure to do so is willful or malicious (46). In return for the hunting or fishing privileges, the sportsman is deemed to have waived these rights (57).

A hunter or fisherman paying a fee for hunting or fishing privileges would be an invitee under the "economic benefit test." Likewise, a hunter or fisherman would be an invitee under the "invitation test" if the farmer had opened his land to the general public for hunting or fishing purposes (61). A farmer must warn an invitee to any known hazards on the premises; in addition, the farmer is also required to make a "reasonable" effort to inspect his land for possible new dangers. If a jury decides a dangerous condition could have been discovered with a reasonable inspection, then the farmer is liable for any injury sustained by an invitee from such hazard (49).

Section 15 (1-5) does not affect the landowner's liability where permission to hunt or fish was granted for "commercial enterprise for profit" (40). Therefore, it is clear that if a farmer is actually in the business of allowing hunters or fishermen on his land for a fee, the sportsmen are invitees. Common examples of farm enterprises in Alabama which allow hunting and fishing for a fee are dove-shoots open to the general public at so much per stand and fish-out catfish operations. In the case of these hunting and fishing farm business ventures, the farmer has the same duty of care and same potential liability to the hunters or fishermen as he does to other invitees.

However, the new statutes seem to indicate that if a farmer sells his hunting or fishing privileges to a small group of individuals (i.e. a hunting club) other than on a public scale, the action would not constitute a "commercial enterprise for profit." This means that as long as the farmer-landowner does not open his land to the general public for a fee he could sell his hunting or fishing rights without making the hunters or fishermen invitees. Thus, as licensees, the sportsmen buying the hunting or fishing right could subject the farmer to only a minimum liability as provided in Sections 15 (1-5) (46).

The net effect of the new statutes is to relieve farmer-landowners of some burdensome legal obligations and, in the process, open more private lands to outdoorsmen.

## **PROPAGATION OF GAME AND ANIMALS**

The State of Alabama, as the owner of all native wild birds and animals, strictly controls the artificial propagation of any wildlife species. As a general rule, it is illegal in Alabama for anyone to raise and reproduce wild birds or animals in captivity. However, an exception is allowed for landowners who wish to raise wild bird or animal species for the exclusive purpose of stocking their private lands with such pen-raised birds or animals. Before a landowner can legally propagate any wildlife species, he must obtain a permit to do so from the Alabama Department of Conservation. Any landowner raising wild birds or animals without a license, or any individual who attempts to dispose of pen-raised wildlife, is subject to a maximum fine of \$100 for each violation (35).

A provision of the Code distinctly prohibits the sale or disposition of pen-raised native birds or animals. However, the bobwhite quail is exempt from this provision. Any person, firm, or corporation in Alabama may engage in the production and sale of quail provided they have a commercial quail breeding license and abide by the regulations set forth in the applicable Alabama statutes. Persons producing quail for sale as food are required to meet numerous health and regulatory standards as established by the Department of Conservation (37).

## **SUMMARY OF WILDLIFE LAWS**

Although ownership of fish and wildlife is vested in the State, Alabama law recognizes that farmer-landowners have the exclusive right to catch and kill the fish and wild animals found on their land. In exercising these exclusive rights to hunt and fish on their property, farmers, like all other Alabamians, must abide by the rules and regulations of the State Department of Conservation. Through numerous statutory and case laws, the Alabama legal structure protects the farmer against intrusion upon his exclusive hunting and fishing rights. By the same token, Alabama law gives the farmer-landowner certain responsibility for the safety of hunters and fishermen on his farms other than trespassers. An additional right granted landowners is the right to propagate wild animals for the purpose of restocking their land with a given wildlife species. Alabama wildlife laws attempt to allow land-

owners the maximum utility from the wildlife resources found on their property, while at the same time ensuring that future generations of Alabamians will be able to continue benefiting from the State's abundant fish and wild animal populations.

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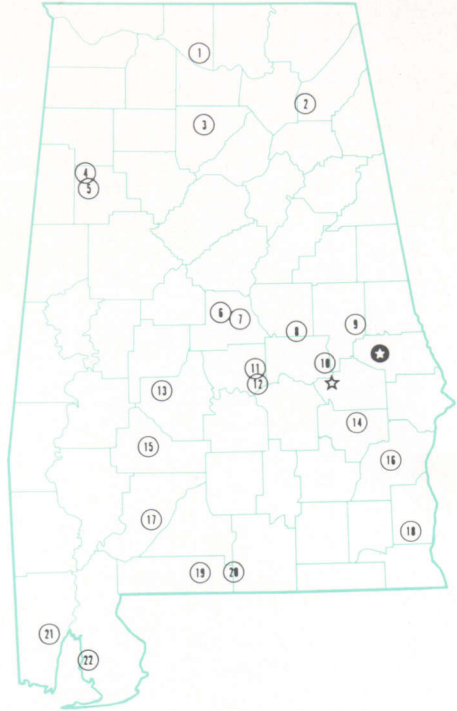
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## Alabama's Agricultural Experiment Station System AUBURN UNIVERSITY

With an agricultural research unit in every major soil area, Auburn University serves the needs of field crop, livestock, forestry, and horticultural producers in each region in Alabama. Every citizen of the State has a stake in this research program, since any advantage from new and more economical ways of producing and handling farm products directly benefits the consuming public.



### Research Unit Identification

- ★ Main Agricultural Experiment Station, Auburn.
- ☆ E. V. Smith Research Center, Shorter.

1. Tennessee Valley Substation, Belle Mina.
2. Sand Mountain Substation, Crossville.
3. North Alabama Horticulture Substation, Cullman.
4. Upper Coastal Plain Substation, Winfield.
5. Forestry Unit, Fayette County.
6. Foundation Seed Stocks Farm, Thorsby.
7. Chilton Area Horticulture Substation, Clanton.
8. Forestry Unit, Coosa County.
9. Piedmont Substation, Camp Hill.
10. Plant Breeding Unit, Tallassee.
11. Forestry Unit, Autauga County.
12. Prattville Experiment Field, Prattville.
13. Black Belt Substation, Marion Junction.
14. The Turnipseed-Ikenberry Place, Union Springs.
15. Lower Coastal Plain Substation, Camden.
16. Forestry Unit, Barbour County.
17. Monroeville Experiment Field, Monroeville.
18. Wiregrass Substation, Headland.
19. Brewton Experiment Field, Brewton.
20. Solon Dixon Forestry Education Center, Covington and Escambia counties.
21. Ornamental Horticulture Field Station, Spring Hill.
22. Gulf Coast Substation, Fairhope.