



TREES & THE LAW

What Liability Does a Landowner Have?

Trees & the Law – What Liability Does a Landowner Have? ¹

*By Scott L. Rouse, General Counsel
Alabama Forestry Commission*

In contemporary society, there seems to be an omnipresent concern for liability. Whether in a government or business setting, liability—and the fear of it—is a constant driver of decision-making. Liability can at times both compel and thwart action, sometimes by merely uttering the word. But do leaders and managers truly know what liability is? Is there really an understanding of what this legal concept entails, or is it just a murky legal boogeyman that simultaneously prompts and deters action based on a fear of costly litigation?

For present purposes, it is assumed there are at least a few decision-makers in the world who have less than a complete grasp of what constitutes legal liability. Fortunately, it doesn't have to be this way. While liability is a beast that must be respected, it can also be understood and even tamed. With an understanding of what liability is and is not, decision-making can become more focused on managing risk of liability rather than being overly and unnecessarily cautious due to litigation fears.

Black's Law Dictionary defines "liability" as "[t]he state of being bound or obliged in law or justice to do, pay, or make good something." Put another way, liability is simply having a legal responsibility, and that responsibility typically requires payment for an injury. However, this does not mean the law imposes a legal responsibility for every injury, nor does it mean payment must be made to everyone who claims to have been harmed. To the contrary, whether a party is ultimately found to be liable usually hinges on whether the party acted with negligence.

Negligence is a common-law concept, but its elements are similar in every jurisdiction. The Alabama Supreme Court has held that "[t]o establish negligence, the plaintiff must prove: (1) a duty to a foreseeable plaintiff; (2) a breach of that duty; (3) proximate causation; and (4) damage or injury." Hilyer v. Fortier, 227 So. 3d 13 (Ala. 2017). See also Aliant Bank v. Four Star Investments, Inc., 244 So. 3d 896 (Ala. 2017); Prill v. Marrone, 23 So. 3d 1 (Ala. 2009). In other

¹ The material provided herein is intended only for general informational purposes. This paper is not intended to convey specific legal advice, and readers are encouraged to seek the counsel of a qualified private attorney to determine what potential liabilities may apply to their individual circumstances.

words, to be found negligent—and therefore liable—one must owe someone a duty and fail to perform that duty in a way that causes the person to be harmed.

Determining whether the owner of trees is negligent typically focuses on whether a duty is owed and exactly what that duty is. As the Alabama Supreme Court has held, “where there is no duty, there can be no negligence.” Dibiasi v. Joe Wheeler Electric Membership Corp., 988 So. 2d 454 (Ala. 2008) (citing earlier cases).

As a threshold question, Alabama courts will often look to whether an injured party is a trespasser or has been invited onto the property. It is well established that both a child or an adult may be a trespasser, and a landowner owes no duty to a trespasser except that it cannot wantonly or intentionally cause the trespasser harm. See Mullins v. Pannell, 289 Ala. 252, 266 So. 2d 862 (1972)². This is distinct from the duty owed to a licensee or invitee. A landowner owes an invitee (typically a person invited onto the property for business reasons) a duty to keep the premises in a reasonably safe condition and, if the premises are unsafe, to warn the invitee of defects and dangers that are known to the landowner but are unknown or hidden to the invitee. A landowner owes a licensee (typically a person invited onto the property for social reasons) a duty to abstain from willfully or wantonly injuring the licensee and to avoid negligently injuring the licensee after the landowner discovers a danger to the licensee. Prentiss v. Evergreen Presbyterian Church, 644 So. 2d 475 (Ala. 1994). These standards of care apply generally to owners of land and are not specific to potential liabilities related to trees.

Regardless of the general standards of care that exist for landowners, Alabama law in many cases imposes no duty whatsoever on landowners for injuries attributable to “natural causes.” This can include such things as fallen trees or spreading tree roots. See Jackson v. USX Corp., 659 So. 2d 21 (Ala. 1994) (landowner company held not liable for motorist’s death caused when his automobile struck a tree that had fallen into the public roadway); City of Birmingham v. Wood, 240 Ala. 138, 197 So. 885 (1940) (landowner found not liable for injuries caused when a woman tripped on a portion of sidewalk that had been damaged by encroaching roots of landowner’s tree). In both cases, the Alabama Supreme Court held the hazards that caused the plaintiffs’ injuries were “nature’s work” of which the landowners had no knowledge or control. The Court stated the

² In this same case, the Alabama Supreme Court also held that a natural object, such as a tree, cannot constitute an attractive nuisance.

landowners had no duty to keep a public thoroughfare safe from hazards caused by the landowners' trees; they only had a duty to do no affirmative act that would create an unsafe condition in the public way. The Court also said in Jackson that the landowner had no general duty to inspect all the trees on its property. The Court specifically noted the landowner had no knowledge the fallen tree was decayed or diseased. However, the decision in Jackson at least suggests the landowner might have been found liable had it known of the condition of the tree and thereafter did nothing to ensure the public's safety.

The Alabama Supreme Court has also held a landowner has no duty to warn persons of open and obvious dangers, because “[t]he law does not require the doing of a useless act.” Richards v. Henderson, 589 So. 2d 709 (Ala. 1991) (quoting Owens v. National Security of Alabama, Inc., 454 So. 2d 1387 (Ala. 1984)). In Richards, the Court held a property owner had no duty to warn an orchard worker of the dangers of falling pecan tree limbs. Similarly, in Howell v. Cook, 576 So. 2d 227 (Ala. 1991), the Court found a landowner was not liable for injuries caused when a person slipped on a peach that had fallen from the landowner's peach tree. There, the Court relied on the analogous case of Shaw v. City of Lipscomb, 380 So. 2d 812 (Ala. 1980), in which a municipality was found not liable for injuries caused when a person slipped and fell on a sweet gum ball that had fallen from a tree in a city park. In both Howell and Shaw, the Court noted that fruit and sweet gum balls are not foreign objects. It is “natural and normal” to find sweet gum balls under a sweet gum tree and peaches under a peach tree, and the landowners in both cases had no duty to clear their property of either.

Alabama case law indicates municipalities bear a somewhat greater duty when it comes to ensuring the safety of its roads and sidewalks. In City of Montgomery v. Quinn, 246 Ala. 154, 19 So. 2d 529 (1944), the Alabama Supreme Court held that cities must exercise reasonable care to keep streets reasonably safe from falling hazards such as tree limbs. This duty applies whenever the city has knowledge of a tree's dangerous condition, or when circumstances indicate a defect in the tree had existed sufficiently long for it to have been discovered and remedied by the city. In Montgomery—where a rotten limb had fallen from a tree on a calm, clear day and struck and killed a child—the Court held there was a jury question as to whether the city should have known of the tree's dangerous condition.

For trees situated on property used for recreation, the associated liability may be lessened considerably. On lands used for statutorily defined recreational purposes, a landowner owes no duty except for injury caused by a willful or malicious failure to guard or warn against a dangerous condition of the property. See ALA CODE §§ 35-15-1 through -5; see also Ex parte Town of Dauphin Island, 274 So. 3d 237 (Ala. 2018). This is especially true on lands made open to the public for non-commercial recreational use, irrespective of whether such areas are publicly or privately owned. On these properties, Alabama recreational-use statutes eliminate landowner liability almost entirely, even removing any duty to inspect for or warn against dangerous conditions on the property. See ALA CODE §§ 35-15-20 through -28; see also Town of Dauphin Island (municipality held not liable after a visitor to a public park was seriously injured by a falling tree limb).

While Alabama law is not brimming with decisions related to tree-related liability, there is yet a sufficient amount of cases for landowners to get a tangible sense of what responsibilities they may have. Like most anything else, owning trees carries a certain risk of liability. However, Alabama courts have typically treated tree owners favorably, acknowledging that trees are natural and thus categorically distinct from many of the other potential hazards that arise on landowners' property. In many situations, the greatest duty owed by a landowner is simply to remove or mitigate known hazardous conditions. Municipalities may bear a somewhat greater burden regarding trees situated near streets and sidewalks. Conversely, the Alabama Legislature has by statute all but eliminated liability associated with trees located on recreational lands. Knowing all these things should at least help arm landowners with the knowledge needed to assess their own risk of liability rather than simply reacting out of fear of the unknown.

Funding for this publication is provided through the USDA Forest Service via a Landscape Scale Restoration Grant administered by the Alabama Forestry Commission and the Mississippi Forestry Commission.



Photo by Leslie Robertson for the National Association of State Foresters.

ALABAMA FORESTRY COMMISSION

513 Madison Avenue
Montgomery, AL 36104
PO Box 302550
Montgomery, AL 36130-2550
(334) 240-9300



forestry.alabama.gov