

## Land Ownership, Liability and the Law



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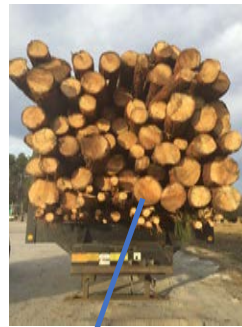
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## Real Property 103: Ownership Interests and “the bundle of sticks”

- Right to quiet enjoyment
  - Basis for nuisance civil action
- Rights to water (riparian)
- Rights to timber
- Rights to subdivide
  - Subject to zoning
  - Subject to soil capacity to support septic
- Rights to...

2+ owner bundle of sticks are shared concurrently  
Each stick is voluntarily **severable**



The right of **sole possession**

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## Trespass Generally

- Common Law cause of action: Invasion of another's "right to sole possession"
- Actionable in criminal law **if properly posted**
- Civil law tort of Trespass requires proof of damages to landowner
  - Timber trespass damages supported by statute
- Gives rise to issues of liability for the offended landowner
  - Common law rule: landowner owes no duty to not injury others upon his/her land
  - North Carolina: two classes of "other" on your land, invitee and trespassers (per *Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882 (1998))

## Common Trespasses

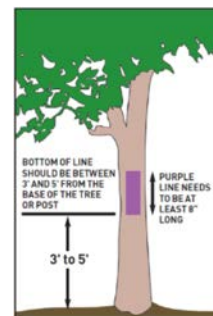
- Timber overcut
- Hunting (a matter of tradition)
- River access (canoeing, swimming, cliff diving)
- Pond fishing
- ATV and horseback riding

## Criminal Trespass: Posting of Property Required (“Landowner Protection Act”)

- [§ 14-159.6 –](#)
  - Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another **that has been posted in accordance with the provisions of G.S. 14-159.7**, to hunt, fish or trap without written permission of the landowner, lessee, or his agent shall be guilty of a Class 2 misdemeanor. Written permission shall be carried on one's person, signed by the landowner, lessee, or agent, and dated within the last 12 months.
  - Enforced by Wildlife Resources Commission, Sheriff, other with general jurisdiction
- [§ 14-159.7. Regulations as to posting of property.](#)
  - notices, signs or posters shall measure not less than **120 square inches** and shall be conspicuously posted on private lands not more than 200 yards apart
  - Purple paint mark: a vertical line of at least **8 inches in length**, and the bottom of the mark shall be no less than 3 feet nor more than 5 feet from the base of the tree or post, placed no more than 100 yards apart
    - Ponds need only be marked along shoreline

## Landowner Protection Act

- Prior to 2011, WRC had to get warrant to arrest trespasser
- NCGS §14-159.6 (outlines proof of permission)
  - Class 2 Misdemeanor for “willful” trespass
  - Class 1 Misdemeanor for pine straw trespass
  - Must produce written permission when confronted by Wildlife Resources Commission officer or sheriff/deputy sheriff
  - Hunt Club provision
    - Must produce hunt club membership card, **and**
    - Written permission
- NCGS §14-159.7 (marking)
  - Signs not less than 120 square inches
  - Not more than 200 yards apart
  - May paint Purple Mark
    - Vertical line 8 inches long
    - 3 feet above ground
    - 100 yards apart



Source: NC WRC

## Wallet Size Card (produced by NC WRC)

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## Trespass – Liability for Injury

- Liability is always **“Evidence Based”**: The plaintiff (injured party) must **prove 4 elements**:
  - You **owned them a duty** to not cause injury (or allow injury to occur)
  - You **breached that duty**, acted in an unreasonable manner
  - Your breach **caused** their injury
  - They sustained **quantifiable damage** (medical bills, pain and suffering, loss of income)
- **§38B-2. General rule.** A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.
- **§38B-3. Exceptions**
  - (1) Intentional harm = “willful or wanton”
    - The Common Law “Spring Gun Trap”
      - Example: thin wire across field entrance (to repel ATV)
      - May use reasonable force to repel a crime
  - (2) Harm to Children (<14) (attractive nuisance doctrine)

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## Attractive Nuisance Doctrine

- **§ 38B-3 (2)**

- Plaintiff must prove 5 elements:
  - Landowner had reason to know that children were likely to trespass **and**
  - Landowner knew of unreasonable risk of serious bodily injury or death **and**
  - The injured child did not appreciate the risk **and**
  - the utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk discover the condition or realize the risk involved (a "balancing test") **and**
  - Landowner/possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.
- Only attaches liability to person in control of the land
  - *Lampkin v. Housing Management Resources, Inc* 725. SE2d 432 (N.C.App. 2012)

- A matter of evidence

- A well worn path entering property
- A hole in the fence
- Litter ('mountain dew bottles', candy wrappers)
- General community knowledge

## Liability Prevention is about...

- Ensuring people do not gain access to your property
- Documenting efforts at such prevention
- Documenting repairs

... and having liability insurance

- Liability policy will cover the cost of defending the lawsuit brought by an injured party
- Will settle if economically in insurance carriers best interest
- Will pay jury verdict if ultimately reaches that point

## Statutory Relief from Liability: North Carolina **Recreational Use Statutes**

- **§ 143B-135.118. Trail use liability.**
- (a) Any person, as an owner, lessee, occupant, or otherwise in control of land, who allows without compensation another person to use the land for **designated trail or other public trail** purposes or to construct, maintain, or cause to be constructed or maintained a designated trail or other public trail **owes the person the same duty of care he owes a trespasser.**
  - Private lands “designated trail” defined [143B-135.98](#)
- (b) Any person who without compensation has constructed, maintained, or caused to be constructed or maintained a designated trail or other public trail pursuant to a written agreement with any person who is an owner, lessee, occupant, or otherwise in control of land on which a trail is located shall owe a person using the trail the same duty of care owed a trespasser.

## Statutory Relief from Liability: Recreational Use Statutes

- **§ 38A-4. Limitation of liability.**
- (a) Except as specifically recognized by or provided for in this Chapter, an owner of land who either **directly or indirectly invites or permits without charge** any person to use such land for educational or recreational purposes owes the person the same duty of care that he owes a trespasser, except nothing in this Chapter shall be construed to limit or nullify the doctrine of attractive nuisance and the owner shall inform direct invitees of artificial or unusual hazards of which the owner has actual knowledge. This section does not apply to an owner who invites or permits any person to use land for a purpose for which the land is regularly used and for which a price or fee is usually charged even if it is not charged in that instance, or to an owner whose purpose in extending an invitation or granting permission is to promote a commercial enterprise.
- (b) Nothing in this section shall be construed to conflict with or render ineffectual a **liability release**, indemnification, assumption, or acknowledgment of risk agreement between the landowner and a person who uses the land for educational or recreational purposes.

## Liability Waivers Generally

- Premise: **Assumption of the Risk**
- A warning of danger “inherent” in activity upon land, only effective against “inherent” dangers
  - May not be effective against dangers caused or exacerbated (i.e. negligence) by party requiring waiver
  - May not be effective against unusual dangers not disclosed by party requiring waiver
    - E.g. an unmarked abandoned mine on property
- NC Case Law
  - *Thackurdeen v. Duke University* (unplanned beach trip part of program activity)
  - *Palacino v. Beech Mountain Resort, Inc.* (waiver only applied to snow sports)
  - *Strawbridge v. Sugar Mountain Resort, Inc.* (waiver only applied to equipment rental, not conditions on mountain)

## Hunting Lease Overview

- Description of Property
  - PIN, common name
  - Acreage
  - Exhibit areal photo of ‘no hunting’ zones
- Term
  - (e.g. April 1 through March 31)
  - Avoid auto renewal
  - No statutory right to renewal
- Deer blinds and structures
- Requirement of Liability Insurance

## Hunting Lease for Hunting Clubs

- Problem of internal policing
  - Require attachment of Club rules as a referenced exhibit to lease
  - Violation of club policy becomes a default under the lease
    - E.g. improper weaponry, blind construction, violation of member guest policy
- Sample prohibitions:
  - Allow construction of temporary **sighting range**, but prohibit semi-auto (“assault”) rifle and handgun use
  - No guide hunting, no “conceal carry” or “tactical” training
  - All blinds removable (no nailing of wooden platforms to trees)



Hunting Lease Exhibit

## Access Agreements (Easements)

- Easement across other property to reach state right of way
  - Must be recorded easement to get title insurance and bank loan (don't depend on non-express easement)
  - Standard for easement use and expansion is use of dominant (served) property (residence? Farming? Logging?)
- Easement can be found as
  - Stand alone document in chain of title
  - As part of original deed
- Preference: effect subdivision of dominant parcel into access corridor to state right of way
- **Recent Case:** Landowner A grants Landowner B an easement (only access to RW), landowner A puts a gate up and gives B the key... B doesn't like

## [farmlaw.ces.ncsu.edu](http://farmlaw.ces.ncsu.edu)



## PROPERTY LINE REALITY

- LANDOWNERS UNCERTAINTY ABOUT TRUE LINES AND CORNERS
- EXPENSIVE TO “RE-LOCATE” LINES
- SURVEY NEEDED??
- LEGAL AND OTHER POTENTIAL ISSUES

## WELL-MARKED LINES AND CORNERS

- TRESPASS
- THEFT AND TIMBER TRESPASS
- TIMBER SALE AND HARVEST PLANNING
- MINIMIZE LIABILITY

## TRESPASS

- TRESPASS SUCCESSFULLY PROSECUTED ON LEGALLY “POSTED”—  
TRESPASSERS CAN CLAIM “IMPLIED PERMISSION”
- TRESPASSERS—L/O CAN’T CAUSE WILLFUL HARM
- LICENSEES AND INVITEES – THERE WITH L/O PERMISSION AND  
KNOWLEDGE—
- L/O MUST PROTECT THEM—ALERT THEM TO HAZARDS, ETC.

## PROPER POSTING

- SIGNS OF 120 SQUARE INCHES OR LARGER ON ACTUAL, NOT SUPPOSED PROPERTY LINE
- NO MORE THAN 200 FEET BETWEEN SIGNS
- CORNERS DOUBLE POSTED
- ESSENTIAL AROUND “ATTRACTIVE NUISANCES”
- GATES, NOT CABLES ADVISABLE ON ACCESSES

## TIMBER TRESPASS

- UNMARKED PROPERTY SUSCEPTIBLE TO NEIGHBOR’S TIMBER TRESPASS
- UNMARKED PROPERTY SUBJECT TO CHALLENGE ON BOUNDARIES OF TIMBER SALE

## TIMBER TRESPASS / THEFT

- **TIMBER TRESPASS** = LANDOWNER LIABILITY TO COMPENSATE NEIGHBORS FOR “TRESPASSED TIMBER”
- **THEFT** -IN NC, FAILURE TO VERIFY LINES AND CUTTING NEIGHBOR’S TIMBER= 2X PAYMENT FOR “STOLEN TIMBER”! THERE GOES THE PROFIT!!!!!!!!!!!!!!

## TIMBER SALE PLANNING

- LINES MUST BE PAINTED OR FLAGGED AND VERIFIED BY L/O AND THEIR CONSULTANT.
- L/O IS CERTIFYING OWNERSHIP OF TIMBER TO BE CUT, WHETHER UNDER TIMBER SALE CONTRACT OR DEED.

## TIMBER SALE PLANNING

- SURVEY MAY BE REQUIRED,
  - DEDUCTIBLE COST OF TIMBER SALE if done during year of sale.
- IF A NEIGHBOR TRESPASSES ON YOU, YOUR COMPENSATION MAY DEPEND ON YOUR VERIFICATION OF YOUR LINE!!!!

## “BUT THE FENCE WAS THE LINE” GRANVILLE CO.

3/4 MILES (3960 FT) OF LINE BASED ON FENCE, WITH LINE ACTUALLY  
RUNNING AN OLD ROAD BED AVERAGING 62 FEET FROM FENCE

5.6 ACRES OVERCUT/7.2 MBF PER ACRE

TIMBER VALUE (2002)= \$1922/ACRE= \$10765

2X=\$21530---SELLER SETTLED



## Avoid Timber Trespass/Theft

- Clearly post your property (conform to or exceed the legal requirements)
- Be diligent with boundary line maintenance
- Repaint as needed to ensure high visibility in all seasons
- Clearly identify property corners

Reference: [content.ces.ncsu.edu/preventing-timber-trespass-and-theft](https://content.ces.ncsu.edu/preventing-timber-trespass-and-theft)

## Avoid Timber Trespass/Theft

### **MONITOR!!!!**

- Visit the property frequently
- Join or establish a formal or informal neighborhood watch group
- Post signage that indicates the property is under surveillance by such a group or insurer
- Encourage ag and hunting lease holders to monitor and report any suspicious activity on the property

Reference: [content.ces.ncsu.edu/preventing-timber-trespass-and-theft](http://content.ces.ncsu.edu/preventing-timber-trespass-and-theft)

## MINIMIZE YOUR LIABILITY

- WELL-MARKED LINES MINIMIZE LANDOWNER LIABILITY FOR RECREATIONISTS
- ESTABLISHED LINES, WELL/LEGALLY POSTED LIMIT LANDOWNER LIABILITY TO TRESPASSERS