Hunting Agreements

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Hunting Agreement

- The agreement that is typically signed by the landowner and the hunting club is not a lease.
  - "One of the principal tests in determining whether . . . the contract is to be interpreted as a lease . . . is whether or not it gives exclusive possession of the premises against all the world, including the owner, in which case a lease is intended." *Holt v. City of Montgomery*, 212 Ala. 235, 102 So. 49, 50 (1924)
  - "The fact that the agreement is entitled 'Hunting Lease' is not dispositive if in fact the instrument shows that the parties created something other than a lease." *David Lee Boykin Family Trust v. Boykin*, 661 So.2d 245, 249 (Ala. Civ. App. 1995)

Profit a Prendre

- If the agreement is in the form of a deed and recorded in the Office of the Probate Judge, then "the right to hunt upon the land of another is a profit a prendre. Jones v. Davis, 477 So.2d 285 (Ala.1985)
  - The 'profit a prendre,' which derives its name from the French, means 'profits to take,' the phrase 'from land' being implied. A profit a prendre is a right exercised by one man in the soil of another, accompanied with participation in the profits of the soil, or a right to take a part of the soil or of the produce of the land." *Reeves v. Alabama Land Locators, Inc.*, 514 So.2d 917, 918 (Ala.1987)

Profit a Prendre

- "The observation by the Reeves court that hunting rights are profits a prendre, however, may be limited to a grant of those rights by deed.
  - See Fairbrother v. Adams, 135 Vt. 428, 430, 378 A.2d 102, 104 (1977) ('the granting of hunting and fishing rights by a deed conveyance creates a profit a prendre, which is an interest in land')."

David Lee Boykin Family Trust v. Boykin, 661 So.2d 245, 250 (Ala. Civ. App. 1995)

Profit a Prendre

- "Many such arrangements will be for a term of years . . . . When considered along with the title of the document, the fact that the duration is measured in years sometimes results in an effort to characterize the relationship as landlord/tenant and an attempt to apply rules from that area. Such efforts are, quite obviously, mistaken. The relationship created by such a document does not extend the general possessory right that is a part of the landlord/tenant relationship. It gives only a right of access to land for the purpose of removing the designated substance and leaves the landowner's general right of possession undisturbed, except to the extent necessary to accomplish that purpose. 8 Thompson on Real Property, § 65.06(b) at 62 (Thomas ed. 1994)

Profit a Prendre

- "The treatise concludes that 'the substantive rules governing the profit a prendre relationship are generally the same as those governing easements.'" *David Lee Boykin Family Trust v. Boykin*, 661 So.2d 245, 250 (Ala. Civ. App. 1995).
- In Alabama, an easement is an interest running with the land; it "can be created in only three ways: by deed; by prescription; or by adverse use for the statutory period." *Camp v. Milam*, 291 Ala. 12, 17, 277 So.2d 95, 98 (1973).
- Therefore, the requirement that the agreement be in writing and recorded in the Probate Judge's Office.

License Coupled with an Interest

- "Based on the reasoning of *Holt v. City of Montgomery*, we hold that the right was a license coupled with an interest. 'A license coupled with an interest is an interest in personalty, and so cannot be described as a lease.' *Steward v. St. Regis Paper* Co., 484 F.Supp. 992, 999 (S.D. Ala.1979)." *David Lee Boykin Family Trust v. Boykin*, 661 So.2d 245, 251 (Ala. Civ. App. 1995)
- "A mere license, as that term is generally used, is revocable at pleasure . . ., but when coupled with an interest, may lose the quality of revocability. . . ." *Holt v. City of Montgomery,* 212 Ala. 235, 102 So. 49 (1924)

License Coupled with an Interest

- The substantive rules governing licenses are the same as those governing contracts. See *Lake Martin/Alabama Power Licensee Ass'n, Inc. v. Alabama Power* Co., 601 So.2d 942 (Ala.1992).
- Therefore, contract principles apply in this case (Boykin which involved a question as to whether the terms of the "hunting lease" had been violated)

Boykin Case

- The agreement provided that Boykin and his licensees and invitees, "would not commit any act that would be or would become hazardous to the growing of timber; . . . that they would not construct any plantings, food plots, roads, structures, etc., without the written consent of the owner; . . . and that, if requested, they would post the land with black-on-yellow signs containing the names of the owner and the hunter." *David Lee Boykin Family Trust v. Boykin*, 661 So.2d 245, 247 (Ala. Civ. App. 1995)

Breach of Contract

- "Breach consists of the failure without legal excuse to perform any promise forming the whole or part of the contract. 17 Am.Jr.2d Contracts § 441 at 897.
- "Where the defendant has agreed under the contract to do a particular thing, there is a breach and the right of action is complete upon his failure to do the particular thing he agreed to do. 17 Am.Jur.2d, supra." *Seybold v. Magnolia Land* Co., 376 So.2d 1083, 1085 (Ala.1979)

Contract Interpretation

- "It is not the province of the court to make contracts for the parties, but its duty is confined to the interpretation of the one which they have made for themselves without regard to its wisdom or folly." *David Lee Boykin Family Trust v. Boykin*, 661 So.2d 245, 252 (Ala. Civ. App. 1995)
- As said by this court, "We do not understand why parties in their right mind should enter into such contracts; but these parties did, the court has no authority to make a contract for them, and the contract, lawful in its provisions though it may be considered improvident on the part of plaintiff, must be given effect, if at all, according to its plain and inescapable meaning." *Union Cent. Relief Ass'n v. Thomas*, 213 Ala. 666, 106 So. 133, 134 (1925)

Contract Interpretation

- "Where the language is unambiguous, and but one reasonable construction of the contract is possible, the court must expound it as it is made by the parties." *David Lee Boykin Family Trust v. Boykin*, 661 So.2d 245, 252 (Ala. Civ. App. 1995)

Contract Interpretation

- Contracts that are ambiguous call for interpretation by the courts, and "it is well recognized that, if a contract is susceptible of two constructions, unconscionable results are to be avoided, and that the irrational and unreasonable was not the contractual intent." *Birmingham Waterworks v. Windham*, 190 Ala. 634, 67 So. 424 (1914)
- "However, the contract is lawful, and the parties fully capable of contracting with no pretense there was any fraud or misrepresentations in its execution. Its language is plain and unambiguous. There is nothing for the court to construe. Under such circumstances the contract is to be enforced, however onerous it may be." *David Lee Boykin Family Trust v. Boykin*, 661 So.2d 245, 252 (Ala. Civ. App. 1995)

What Constitutes Posting Why is it Important

- "A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privileges unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner." §13A-7-1(4) Code of Alabama (1975)

What Constitutes Posting Why is it Important

- "The provision relative to entering unenclosed, unimproved land is designed to exclude from criminal trespass in the third degree a person who enters upon, e.g., wild forest land, when there is no indication of apparent prohibition against intrusion. Such technical 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." Notes to §13A-7-1(4) Code of Alabama (1975)

Landowner Liability

- A landowner's liability is based on negligence
  - You were probably not on the property when the accident/injury took place
    - 4-wheeler accident
    - hunting accident

Negligence

- The plaintiff's burden is to present substantial evidence of the following:
  - A duty owing from the defendant,
  - A negligent breach of that duty,
  - Which proximately caused,
  - The plaintiff to be injured or damaged.

Avery v. Geneva City, 567 So. 2d 282 (Ala. 1990)

Duty

- In Alabama the duty owed by a landowner to a person on his property varies greatly based upon the classification of the person on the land.

Classification

- There are three classifications of persons coming onto the land are:
  - Trespasser
    - A trespasser is a person entering or remaining on land in another's possession without privilege to do so, created by the possessor's consent or otherwise.
    - "A person is a trespasser where he enters on the property of another without any right, lawful authority, or express or implied invitation, permission, or license, not in the performance of any duty to the owner or person in charge or any business of such person, but merely for his own purposes, pleasure, or convenience, or out of curiosity, and without any enticement, allurement, inducement, or express or implied assurance of safety from the owner or person in charge." *Yielding v. Riley*, 705 So. 2d 426, (Ala. Civ. App. 1997)

Classification

- There are three classifications of persons coming onto the land are:
  - Licensee
    - A person who visits a landowner's property with the landowner's consent or as the landowner's guest but with no business purpose
  - Invitee
    - A person who enters the land with the landowner's consent to bestow some material or commercial benefit upon the landowner

Hambright v. First Baptist Church-Eastwood, 638 So2d 865 (Ala. 1994)

Duty owed

- Trespasser
  - To not wantonly or intentionally injure the trespasser
  - To warn him of dangers known by the landowner after the landowner was aware of danger to the trespasser (known trespassers)
- Licensee
  - 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. The duty is not an active one to safely maintain the premises

Yielding v. Riley, 705 So. 2d 426, (Ala. Civ. App. 1997)

Recreational Use Statutes §35-15-1 through §35-15-5

- Under these sections, "an owner, whether public or private, owes no duty to users of the premises except for injury caused by a willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity." *Poole v. City of Gadsden*, 541 So. 2d 510 (Ala. 1989)
  - "An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry and use by others for hunting, fishing, trapping, camping, water sports, hiking, boating, sight-seeing, caving, climbing, rappelling or other recreational purposes or to give any warning of hazardous conditions, use of structures or activities on such premises to persons entering for the above-stated purposes, except as provided in section 35-15-3." Code of Alabama (1975) §35-15-1

Duty Owed

- Invitee
  - A landowner owes an invitee the duty to keep the premises in a reasonably safe condition and, if the premises are unsafe, to warn of hidden defects and dangers that are known to the landowner but that are hidden or unknown to the invitee. *Hambright v. First Baptist Church-Eastwood*, 638 So2d 865 (Ala. 1994)

In re: Mountain Top Indoor Flea Market, Inc.

- The plaintiff, a business invitee, was injured when she slipped and fell on loose gravel on the premises. [She was crossing a drainage ditch filled with gravel.] She sued the defendant and others, alleging that they had caused her to fall and be injured.

Liability

- "As a general rule, an invitor will not be liable for injuries to an invitee resulting from a danger which was known to the invitee or should have been observed by the invitee in the exercise of reasonable care." *Quillen v. Quillen*, 388 So. 2d 985 (Ala. 1980)

Liability

- "The duty to keep premises safe for invitees applies only to defects or conditions which are in the nature of hidden dangers, traps, snares, pitfalls, and the like, in that they are not known to the invitee, and would not be observed by him in the exercise of ordinary care.
- The invitee assumes all normal or ordinary risks attendant upon the use of the premises, and the owner or occupant is under no duty to reconstruct or alter the premises so as to obviate known and obvious dangers, nor is he liable for injury to an invitee resulting from a danger which was obvious or should have been observed in the exercise of reasonable care." *Marquis v. Marquis*, 480 So.2d 1213 (Ala. 1985)

Liability

- "Whether we speak in terms of the duty owed by the defendant or of contributory negligence of the plaintiff, the plaintiff cannot recover for negligence or wantonness if the plaintiff's injury was caused by an open and obvious danger of which the plaintiff knew, or should have been aware.
- However, not only must the plaintiff have knowledge of the dangerous condition, but the plaintiff also must have a conscious appreciation of the danger posed by the visible condition at the moment the incident occurred." *Marquis v. Marquis*, 480 So.2d 1213 (Ala. 1985)

Liability

- "The entire basis of an invitor's liability rests upon his superior knowledge of the danger which causes the invitee's injuries. . . . Therefore, if that superior knowledge is lacking, as when the danger is obvious, the invitor cannot be held liable." *Grider v. Grider*, 555 So. 2d 104, (Ala. 1989)

Liability

- "We have long been committed to the proposition that the plaintiff's appreciation of the danger is, almost always, a question of fact for the determination of the jury." Kingsberry Homes Corp. v. Ralston, 273 Ala. At 394, 140 So. 2d at 825
- Jones Food Co, Inc. v. Shipman