

## **NO TRESPASSING**

A common question asked by the landowners who attend our Natural Resource Enterprises landowner workshops throughout Mississippi, an excellent program sponsored by the Mississippi State Extension Service and Department of Wildlife and Fisheries, concerns the legal obligation a landowner owes to a trespasser. Landowners often worry that individuals trespassing on their property, hunting their property boundaries, fishing in their ponds, driving 4-wheelers through their old logging roads, might sue them if injured.

However, in Mississippi a landowner owes no duty to a trespasser except to not willfully or wantonly injure him. In other words, don't shoot or assault a trespasser. If he is trespassing, he has no right to be there and you don't owe him a duty to look out for his well-being. But make sure he is in fact a trespasser. If he has your permission to be on your property, he is considered a licensee. A landowner's duty toward a licensee is no greater than that to a trespasser except to warn him of hidden or non-apparent dangers. For instance "it's OK to hunt, but don't cross the bridge at the creek on your 4-wheeler because it's about to cave in." The third status one may occupy on your property is that of an invitee, someone there for your mutual benefit. For instance, if you charge fees to fish in your lake, or offer paid hunts, then your guest becomes an invitee. To an invitee, you have a duty as a landowner to exercise reasonable care not to injure him, and to warn him of any latent (hidden) dangers known to you, or which you should be aware of in the exercise of reasonable care. So, if you're putting someone in a deer stand at 5 a.m., you should make sure it is properly secured to the tree, and that it is reasonably safe. It's the same reason department stores place those little yellow warning signs saying, "Caution - wet floor." You're an invitee of the store, there to spend your money, so they owe you a higher duty.

Few things aggravate a landowners more than trespassers and poachers. There was a time that signs proclaiming "Trespassers will be shot" meant what it said. But don't confuse your rights as a recreational landowner with the "Castle Doctrine" law, which was amended effective July 1, 2006 to add teeth to the law which protects those who use force to defend themselves in instances when they fear imminent death or "great personal injury." The typical scenario here is someone breaking into your home in the dead of night. There is now a presumption that the person using defensive force did in fact reasonably fear imminent death or great personal injury by the perpetrator if that person was in the process of or had actually entered a dwelling or occupied vehicle. This should not be confused with what generally constitutes trespass in the context of recreational land. It would be very difficult to justify using "defensive force" against someone you caught in your tree stand or fishing in your pond.

The better approach as hunting season approaches and trespassing incidents occur more frequently is to get to know you local conservation officer and sheriff and put their numbers on your speed dial. Mississippi trespass laws (§97-17-93 of the Miss. Code) provide that trespassing is a misdemeanor with fines of \$150 - \$250 for first offenses; for second offenses (occurring within five (5) years) fines are increased to

\$250 - \$500 and can include possible imprisonment from ten (10) to thirty (30) days, or both. Where the trespasser has been previously warned by the landowner verbally, in writing, or by sign, the fine can be up to \$500.00 and include up to six (6) months in jail (§97-17-97). Let the law enforcement officials help you rather than risking potentially dangerous confrontations. Trespasser will get the message soon enough that you're serious about protecting your property.

If you do engage in recreational profit-based enterprises, try to obtain general liability insurance, consider setting up a corporation or limited liability company to conduct your business, get liability waivers signed by guests as a condition to using your property and include hold harmless provisions in your lease agreements insulating you from accidents that might occur on your property. The next scheduled landowner workshop hosted by Natural Resource Enterprises will be held October 11 at the McKenna Ranch in Pachuta, Mississippi. For more information, visit [www.naturalresources.msstate.edu](http://www.naturalresources.msstate.edu).

Mike Massey is a partner in the law firm of Massey, Higginbotham, Vise & Phillips, P.A. in Flowood. You may contact him at [www.outdoorlawyer.com](http://www.outdoorlawyer.com).