



4266 Tuller Road Dublin, Ohio 43017
www.wright-law.net

Robert Moore, Attorney at Law
614-339-4971
rmoore@wright-law.net

LAWS RELATED TO OHIO SPORTSMEN

Ohio is fortunate to have an abundance of wildlife and endless opportunities for hunters and fishermen. The vast majority of land in Ohio is privately owned and many pond, lakes, and streams are privately owned as well. Therefore, many sportsmen must pursue their hunting and fishing interests on private property. A thorough understanding of Ohio property laws may help hunters and fishermen avoid trespassing and related offenses.

Permission to Enter Private Property

Permission is always required to hunt or fish on private property. Failure to obtain permission from the property owner will result in trespassing. Ohio law requires hunters and trappers to obtain written permission from the landowner and to carry the permission form with them while on the property.¹ The Ohio Department of Natural Resources has forms available that are the preferred form for permission. Fishermen are not required to have written permission to fish on private property but it is a prudent measure nonetheless.

Trespassing

Civil Trespass

Trespassing can be civil trespassing, criminal trespassing, or both. Civil trespassing is defined as "entry upon that land by another, without a license or other authorization²". It is important to note that civil trespassing does not require intent so that a trespass can occur unintentionally. A trespass can occur even if the trespasser was acting in good faith or from an honest motive to accomplish some good end³.

¹ Ohio Revised Code §1533.17

² Holeton v. Ellison, 64 Ohio L. Abs. 214, 111 N.E.2d 399

³ W.U. Tel. Co. v. Smith, 64 Ohio St. 106, 59 N.E. 890 (1901).

Criminal Trespass

Sportsmen who trespass on private property are much more likely to be subject to criminal trespassing. Ohio law defines criminal trespassing as "to knowingly enter or remain on the land or premises of another..."⁴. Criminal trespassing is different from civil trespassing in that it requires intent to commit trespass. Thus, a hunter cannot be guilty of criminal trespassing if he believes he is on property which he either owns or has permission to hunt and has mistakenly entered property without permission.

A common myth is that the property must be "posted" with "No Trespassing" or similar signs before a criminal trespass can occur. This is not so. A property owner is under no duty to "post" his property or to advise everyone that they are about to enter private property⁵. Rather, it is the duty of the hunter or fisherman to know who owns the property upon which they are entering. A hunter or fisherman who enters property that he knows he does not have permission to enter is guilty of trespassing regardless of whether he knows who the actual owner of the property is. The advantage of posting one's property is that it denies a trespasser the defense of mistakenly entering the property.

Consider the following scenarios:

1. Fisherman receives permission to fish in Joe's pond. While fishing, Joe notices a nearby pond that looks like a good fishing spot. He walks to the pond and begins fishing believing that he is still on Joe's property. Fisherman is not criminal trespassing because he is not knowingly on someone's property.
2. Same facts as above but Fisherman knows that the second pond is not owned by Joe. Fisherman is committing criminal trespassing because he is knowingly on someone's property without permission. The fact that Joe does not actually know who owns the property is irrelevant.
3. Same facts as #2 but the second pond has "No Trespassing" signs. The outcome is the same as #2. Fisherman is committing criminal trespass whether the property is posted or not. The only difference is that Fisherman cannot claim that he did not know the second pond was on someone else's property, making a criminal trespassing conviction more likely.

Actions Against Trespassers

Property owners who find trespassers on their property have several options. The owner can file a lawsuit against the trespasser on a claim of civil trespassing. However, if the trespassing hunter or fisherman did not cause any damage or little damage to the property, the lawsuit will be much more expensive than any damage or inconvenience

⁴ Ohio Revised Code §2911.21

⁵ State v. Janson 183 Ohio App.3d 377, 917 N.E.2d 296, 2009 -Ohio- 3256

caused to the land owner. Civil lawsuits against trespassing sportsmen are rarely justifiable.

The better option is to contact the local game warden or law enforcement. A citation can be issued against the trespasser by law enforcement. The charges are then enforced against the trespasser by the local prosecuting attorney or similar public official. The challenge is having law enforcement officers available when the trespass is occurring. If law enforcement is not available when the trespass occurs, the landowner should take pictures showing the trespass and the identity of the person. This evidence can be provided to law enforcement at a later date and the citation issued then.

An option that should never be exercised is to intentionally cause harm to a trespasser. The law will always favor a trespasser's wellbeing over the rights of the landowner. If the trespasser does not leave upon demand, the property owner should call law enforcement and not take matters into their own hands.

Some Trespassers are never actually seen but leave signs of their trespass behind like litter or paths through fields. While the landowner may become very frustrated in these situations, traps should never be set for unknown Trespassers. Traps are considered intentional acts to harm the trespasser and the landowner would likely be liable for injuries to the trespasser. Some examples of traps include spring-loaded guns, trip wires, and covered holes.

Determining Ownership of Property

In order to ask for permission to hunt or fish on private property, the sportsman must know who owns the property. With today's technology, it can be relatively easy to determine property ownership. Most county Auditor web sites have maps showing property boundaries and the owner of each parcel. The parcel information will usually include an address of the owner to allow the owner to be contacted. A few minutes of searching on the internet can prevent the perils of trespassing.

Fishing in Streams and Rivers

The most controversial and most often misunderstood property issue related to sportsmen is ownership of creeks and rivers. Watercourses are divided into public (navigable) waterways and private (non-navigable) waterways. Public waterway is defined as those waterways used, or susceptible of being used, in its ordinary condition, as a highway for commerce, over which trade and travel are, or may be, conducted in the customary modes of trade and travel upon water"⁶. Commerce includes recreation such as sailing and fishing. Rivers and streams that are large enough to hold populations of sport fish are likely to be navigable.

⁶ East Bay Sporting Club v. Miller, 118 Ohio St. 360

The following factors are used to determine the navigability of a water course for use either for recreation or for commerce:

- (1) the capacity of the water course for boating in its natural condition;
- (2) its capacity for boating after the making of reasonable improvements; and
- (3) its accessibility by public termini.

It is well established under Ohio law that the public enjoys an "easement of navigation" on public waterways⁷. Anyone may use a public waterway for commerce or recreation⁸. Fishermen exercise their right of navigation as they float down their favorite stream or river in a boat, kayak, or canoe.

Non-navigable waterways are private property owned by the landowner adjacent to the waterway⁹. Fishermen must be granted permission to float on these waterways to avoid being trespassers.

The ownership of the streambed or riverbed beneath the waterway is treated much differently. The streambed is owned by the property owner adjacent to the waterway. If different people own the land on each side of a waterway, each owner owns the streambed to the middle of the water channel¹⁰.

Another source of confusion regarding ownership of stream beds is the property boundary of the adjacent land. Most surveys for land adjacent to waterways will state that the property boundary is the bank of the stream or river. A fisherman reviewing deeds for land adjacent to a waterway may therefore logically conclude that no one owns the streambed because the survey ends at the bank. County Auditor information will also often show the boundary ending at the river bank. However, Ohio law provides that the adjacent landowner owns to the middle of the watercourse even if the deed survey ends at the bank¹¹. This law essentially fills in the void left by deed surveys ending at the riverbank. The only exception is if the deed expressly states that the deed does not include the riverbed.

For example, Fisherman goes fishing on a nearby public river. He starts his fishing trip by launching his canoe from a public park. Fisherman can float down the river without needing permission from the adjacent landowners as he is enjoying his easement of navigation. Partway through his trip, Fisherman exits his canoe to do some wading. Fisherman is now standing on the riverbed and private property. He must have permission from the adjacent landowners or will be trespassing. Upon reentering the canoe, Fisherman is no longer trespassing.

⁷ Pollock v. Cleveland Ship Bldg. Co., 56 Ohio St. 655, 47 N.E. 582

⁸ State ex rel. Brown v. Newport Concrete Co., 44 Ohio App. 2d 121, 73 Ohio Op. 2d 124, 336 N.E.2d 453

⁹ Also known as the riparian owner or riparian rights.

¹⁰ Portage Cty. Bd. of Commrs. v. Akron, 109 Ohio St. 3d 106, 2006-Ohio-954, 846 N.E.2d 478

¹¹ Gavit's Adm'rs v. Chambers, 3 Ohio 495, 496, 1828 WL 29

The reality is that most riparian owners do not object to fishermen wading in the stream or river. Most fishermen are respectful of the adjacent property owners and are careful to not leave litter or other signs of their presence. However, a few landowners do object to anyone wading on their portion of the riverbed. In these situations, the landowner does have the legal right to demand the fishermen leave their portion of the riverbed.

Lake Erie

Property rights related to Lake Erie are a bit different than inland waterways. The waters of Lake Erie are open to the public. Landowners along Lake Erie have title to the land to the natural shoreline which is the line at which the water usually stands when free from disturbing causes. The State of Ohio owns the land at the natural shoreline and beyond¹².

Ohio River

Ownership of land along the Ohio River ends at the water because that is the boundary for the state.¹³ Counties and municipalities along the Ohio River have jurisdiction over the water to enforce local or state laws. For example, a person operating a boat without proper safety lights in the Ohio River near Cincinnati is within the jurisdiction of the Hamilton County Municipal Court.¹⁴

Recreational User Statute

Ohio's Recreational User Statute¹⁵ (RUS) provides special protection for landowners who allow others to use their land for recreation such as hunting, trapping and fishing¹⁶. The idea behind the RUS is to provide liability protection to landowners so that they will open up their properties to hunters and fishermen. A landowner is not liable for a hunter's or fisherman's injuries while they are using the owner's land provided that the following criteria are met:

1. The land being hunted or fished is non-residential;

¹² State ex rel. Merrill v. Ohio Dept. of Natural Resources, Slip Opinion No. 2011-Ohio-4612.

¹³ Blanchard's Lessee v. Porter, 11 Ohio 138, 1841 WL 61 (1841).

¹⁴ State v. Gentry, 61 Ohio Misc. 2d 31, 573 N.E.2d 220 (Ohio Mun. 1990)

¹⁵ Ohio Revised Code §1533.18 and §1533.181

¹⁶ The RUS also applies to camping; hiking; swimming; or operating a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicle; or engaging in other recreational pursuits.

2. The hunter or fisherman has permission to be hunting or fishing on the property¹⁷.

Consider the following example, Fisherman is granted permission to fish in a pond owned by Landowner. While fishing on the bank, Fisherman steps in a groundhog hole, breaks his leg, and incurs significant medical bills due to the mishap. If the accident occurred on land that is non-residential, Landowner is not liable for Fisherman's injuries.

Ownership of Wildlife

All wild animals are owned by the state of Ohio in trust for its residents¹⁸. Upon a wild animal being lawfully caught, captured, or killed, ownership of that animal transfers to the hunter or fisherman. Fish in a river or stream are owned by the state and not the adjacent property owners until such fish are lawfully caught by a fisherman at which time the fisherman owns the fish. Animals that are caught or killed unlawfully¹⁹ remain the property of the state and the responsible sportsman is subject to criminal charges.

Conclusion

The above discussion illustrates some of the common misunderstandings that many sportsmen have regarding laws applicable to their outdoor endeavors. Understanding basic property rights and related laws will allow landowners and sportsmen to have better, more informed relationships to the benefit of both parties. However, it is important to understand that this discussion is very general and meant only for educational purposes. Legal council should be obtained when any question or issue arises regarding hunting/fishing and property rights. The law is fraught with exceptions. Additionally, the law applies differently to different factual situations and a seemingly insignificant fact can cause a completely different legal outcome.

¹⁷ If permission is not given, the hunter or fisherman is a trespasser and Ohio law typically does not hold the landowner liable for a trespasser's injuries while unlawfully on the property.

¹⁸ Ohio Revised Code §1531.02

¹⁹ Examples include keeping fish outside a slot limit, killing wildlife outside of season, or using an unapproved method of catching or killing.