

193.

HUNTING PERMIT—LANDOWNER'S LIABILITY TO PERMITTEE—NOT
LIABLE IN ABSENCE OF WANTON OR WILFUL NEGLIGENCE OR
FAILURE TO WARN OF HIDDEN DANGERS.

SYLLABUS:

Any person signing a landholder's hunting permit or any other hunting permit is not liable to the person to whom issued for mere negligence but must not wantonly or wilfully injure him, nor expose him to hidden dangers, obstructions or pitfalls.

COLUMBUS, OHIO, March 7, 1933.

HON. WILLIAM H. REINHART, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

“The State Law requires written permission from landholders to hunters for hunting on property. Sportsmen have reported a reluctance on the part of many farmers to sign a permit, or the backs of hunting licenses or any other writing. These farmers contend that such signed permission will make the signer responsible for accidents, personal injury or other distress which might be suffered by the person receiving and holding the signed permit.

For the purpose of clearing up misunderstanding we would appreciate a ruling from your office setting forth whatever legal obligations are incurred by parties signing the enclosed ‘Landholders Hunting Permit’ or any other hunting permit.”

Although the title to all wild game and fur-bearing animals is vested in the people, their right to kill game is subject to two limitations. First, the state may make regulations, and secondly, the owner of lands within the state has the exclusive right to hunt and kill game upon his own premises. Section 1437 of the General Code reads as follows:

“No person shall hunt or trap upon any lands, pond, lake or private waters of another except water claimed by riparian right of ownership in adjacent lands, or thereon, shoot, shoot at, catch, kill, injure or pursue a wild bird, wild water fowl or wild animal without obtaining written permission from the owner or his authorized agent.”

Thus though one has no natural right to hunt on the premises of another, such right may be acquired by license, reservation in a lease, or written permission.

It is my view that where a landowner signs a hunting permit he places himself in the position of a licensor and the person to whom given in the position of a licensee. A license has been defined as a personal, revocable, non-assignable privilege, conferred either by writing or parol to do one or more acts on land without possessing any interest therein. A person is a licensee where his entry or use of the premises is permitted by the landowner so that he is not a trespasser

but is without any express or implied invitation. A person who comes on premises by virtue of a landholder's hunting permit is not there by virtue of any contractual relation, business, enticement or inducement to enter held out to him by the landowner, but is there for his own benefit, convenience or pleasure, and thus is a licensee as differentiated from an invitee.

The duty owing to a licensee has been very well stated in the case of *Hannan, Admr., vs. Ehrlich*, 102 O. S. 176, which has been followed by the authorities. wherein the court said at page 185:

"It may be generally stated that a licensee takes his license subject to its attendant perils and risks, that the licensor owes him no duty except to refrain from wantonly or wilfully injuring him, and that he should exercise ordinary care after discovering him to be in peril. Included in the foregoing rule there should be the further statement that the licensee should not be exposed to hidden dangers, pitfalls or obstructions."

In 45 Corpus Juris, 796, the rule is stated as follows:

"No duty exists toward a mere licensee except to refrain from wilfully or wantonly injuring him, but the courts frequently add to this exception, or state in place thereof, some of the other well recognized exceptions, such as the duty not to set traps for a licensee or expose him to hidden perils, or to use care to avoid injuring him after his presence is or should be discovered, or not to injure him through active negligence."

Thus it can be seen that the duties of a property owner are practically the same in respect to a licensee as toward a trespasser. The essential difference is that in case of a licensee the property owner has the duty of anticipating him and therefore would be required to warn the licensee of any hidden dangers. To state exactly all the legal obligations incurred by a party signing the landholder's hunting permit would be impossible, as in the last analysis it depends entirely on a given set of facts.

Based on the foregoing citations and reasoning in specific answer to your question, I am of the opinion that the only rule by which we can be guided is that the landowner owes the hunter only a duty not to wantonly or wilfully injure him, nor expose him to hidden dangers or obstructions, but can not be held liable for any injury received through mere negligence of the licensor on the premises to which the license extends.

Respectfully,
JOHN W. BRICKER,
Attorney General.