

Timberland Investing and Private Property Rights in the United States of America*

Caroline Harris¹, Tom Harris², Jacek Siry²

¹Independent

²University of Georgia, Athens, GA, USA

Email: mcarolineharris@yahoo.com

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Abstract

Investments in rural land for agriculture, timber, and other natural resource purposes occur frequently and globally. Fundamental principles of liberty and property found in the United States of America's ("US") legal system, from its origins to recent US Supreme Court decisions, continue to positively benefit holders of real estate in the Southern US, through a deep-rooted public policy of supporting private property rights and rural economic development. This stable rule of law enhances the long-term adaptability and sustainability of timberland as an asset class. This article is a commentary. It combines legal research methodology with the observations and conclusions of the authors. Its purpose is to demonstrate that the existence of alienable, documentable ownership, and related property rights create inherent stability and security. These principles form the basis of a culture that is defined by the rule of law and is "open for business." This business mindset is particularly prevalent in the Southern US.

Keywords

Forest Economics, Property Law, Property Rights, Private Land Ownership, History of Forestry, Alternative Asset Classes, Premises Liability, Recreational Land Use, Business Law, Capital Use, Real Estate Title, Rule of Law, United States Constitutional Law, Legal History

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1. Introduction

Private land property rights are integral to the socioeconomic fabric of the US. These rights should neither be ignored nor discounted. The US timberland asset class depends on property rights to protect the value of investments. As public policy, such rights perpetuate an environment that is welcoming to business. This commentary highlights some of the value attributes, economic benefits, and legal protections of timberland investment in the Southern US. The authors combined legal and economic research with forest business experience in this project. For investors evaluating risks, engaging in due diligence, and considering where to deploy capital, the fundamental protections as discussed in this article should add to the attractiveness of an investment in the Southern US. The overall purpose of this article is to demonstrate that the existence of alienable, documentable ownership, and related property rights create inherent stability and security, permeating the regulatory, judicial, economic, and political climate of the Southern US.

The following section provides some background information on timberland investment considerations, including examples from around the world. The rule of law, strong property rights, and ownership policies in the US are addressed in Section 3, while acknowledging problems and issues with eminent domain in Section 4. The timber and wood products industry has always been vital to the US economy, from colonial times until the present. The industry's role is described in Section 5. As indicated in Section 6, the drafters of the US Constitution clearly acknowledged and recognized that property rights are essential for prosperity. Another benefit of the US system, addressed in Section 7, is the flexibility of commercial activity and the variety of legally recognized business structures available to hold property and engage in commercial activity. Section 8 describes various recreational opportunities, along with trespass concerns and liability considerations. The final discussion and conclusion in Section 9 briefly outlines the main points and summarizes the findings.

2. The Global Picture: Land Acquisition or Criminal Land Grab?

Investments in rural land for agriculture, timber, and other natural resource purposes occur frequently and globally. Timber is real property in the US (*See, Timber Sale Contract Considerations, 2018*). An investment in US timberland can create sustainable, diverse, long-term cash flows, as well as capital appreciation on a hard asset (*Cf., Dixon, 2016; Dixon, 2017; Korn, 2014; Lim, 2016; Jacobus, 2018*). As an asset class, timberland is often segregated and classified as its own sector, separate from other real estate and farmland transactions. From a legal perspective, however, any timberland investment is essentially an investment in commercial real estate, with many of the same issues: ownership, boundaries, access, land use, development potential, environmental concerns, employment conditions, finance options, valuation, pending and potential liabili-

ties.

US timberland comprises 64% of the total global timberland market by value (approximately \$80 billion of the \$125 billion total market) (Flynn, 2016). Other important markets include, for example, Sweden, Finland, the United Kingdom, Brazil, Chile, Australia, and New Zealand (*Ibid*). The asset class is relatively small in comparison to the market cap of Amazon.com, Inc., at \$1.538 trillion (July 22, 2020) and Apple Inc. at \$1.684 trillion (July 22, 2020). Further, in comparison to commercial real estate value estimates, the timberland sector looks niche. The North American commercial real estate market was estimated at \$9.5 trillion in 2017 or 29% of total global commercial property value, dwarfing other markets including China (\$3.6 trillion), Japan (\$2.8 trillion), Germany (\$1.7 trillion) and the United Kingdom (\$1.7 trillion) (Tostevin, 2018).

Regardless of the date, place, or scale of any real estate transaction, two geopolitical risk factors are always crucial: what are the relevant property rights, and how secure is continued use?

Across a wide portion of the globe, private property rights do not exist, are threatened, or are limited in scope and use. For example, in South Africa, there is open discussion of expropriation of land without compensation, with at least one political party demanding that all land be placed under the custodianship of the State (Sguazzin & Mbatha, 2019). In Indonesia, there is a continuing moratorium on new timber leases (Chen et al., 2019). In Cambodia, allegations persist that the country's ruling elite, including its government and military, has perpetuated human rights violations by grabbing land and forcibly evicting an estimated 350,000 people over the past two decades (Vidal & Bowcott, 2016). In Central and South America, governments have seized tens of millions of hectares of land (1 hectare = 2.471 acres) over the past decade. In China, foreign investors cannot purchase real property (land); instead, land is owned by the State or collectives and subject to an evolving system of land use rights. In India, the government has been accused of profiting from land speculation and improperly seizing farmland to sell to developers. This is a small sample of the challenges in the global rural real estate marketplace.

Additionally, the Rome Statute of the International Criminal Court ("ICC"), to which more than 120 nations, but not the US, are signatories, has taken steps to criminalize and to prioritize what it deems "environmental crimes" in a policy paper that one commentator from the anti-corruption group, Global Witness, has called a "warning shot to company executives" (Harrison, 2016). The ICC has targeted the following in its future criminal prosecutions:

The office [of the prosecutor] will give particular consideration to prosecuting Rome statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land. ... The terrible impacts of land-grabbing and environmental destruction have been acknowledged at the highest level of criminal justice, and private sector actors could

now be put on trial for their role in illegally seizing land, flattening rainforests or poisoning water sources.

(International Criminal Court, Office of the Prosecutor, September 15, 2016)

This global tension arises from many factors not elaborated upon herein, including poverty, scarcity of resources, and political turmoil. One factor that is, however, relevant for this article: the legal definition and treatment of real property. As a simplification, common to many rural parts of the world is a formal separation between land ownership and land use. Often working with the local government to obtain legal recognition of one's assets can be frustratingly difficult and approaching impossible. In several nations, the government owns the land, and the users of the land do not have any protection related to continued use and livelihood. This creates legal uncertainty and, in turn, investment risk.

In his book, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Peruvian economist Hernando de Soto argued that the lack of formally owned land and a secure title system in emerging economies limit access to capital and prevent the development of capital markets and finance methods, such as mortgages, bonds, liens, and other forms of asset-backed securitizations (de Soto, 2000). The World Bank has repeatedly linked the registration of property rights with economic development (See, de Schutter, 2015). In its 2019 report, *Doing Business*, an entire case study entitled, "Starting a Business and Registering Property: the role of training in facilitating entrepreneurship and property rights," focused on the importance of training land registry officials and underscored the value of recorded property rights in developing economies:

By keeping records of a company's formal existence and of land ownership rights, business and land registries play a critical role in any economy's business environment.

(International Bank for Reconstruction and Development, World Bank, *Doing Business*, 2019)

3. Property Rights and Ownership Issues Are Well Settled in the US

This article will not address the issue of whether the other nations should adopt the land title system, traditions, and practices of the US. The intent of this article is to demonstrate that the existence of alienable, documentable ownership, and related private property rights create inherent stability and security and are necessary for developing a successful business environment. These rights permeate the regulatory, judicial, economic, and political climate of the Southern US, creating a culture that is "open for business."

As the World Bank noted,

The easier it is to register property rights, the faster and the cheaper the

procedures are for transferring property rights, and the more investors will be willing to enter the country concerned and thus ... contribute to its development.

(International Bank for Reconstruction and Development, World Bank, *Doing Business*, 2014)

The existence of a title registry, company records, and access to capital are not in question in the modern US economy. In *Haw River Land & Timber Company, Inc. v. Lawyers Title Insurance Corporation*, the Fourth Circuit Court of Appeals set forth a concise definition of title and its relationship to value:

Title refers to the legal ownership of a property interest so that one having title to a property interest can withstand the assertion of others claiming a right to that ownership. ... But title to property does not characterize the property itself as valuable, merchantable, or even usable. Thus, while title to property may be unassailable, the property itself may have no value and may even constitute a burden to its owner. ... And marketable title is one which is free from reasonable doubt in law or fact as to its validity.

(152 F.3d 275 (1998))

Orderly record keeping of property ownership is entrenched in US legal history and practice. Whether measured in metes and bounds or land ordinance survey, real property is rooted in a tradition of private ownership. Deeds and records of land transfers from the colonial era were honored and ownership remained valid after the Revolutionary War. The Land Ordinance Act of 1785 codified a basic survey and property regime that is expressly alienable, transferable, and demonstrable (Carstensen, 1988). Similarly, company records are registered according to the laws of each of the fifty states. Such record keeping is a rudimentary concept, and one that is often taken for granted, but with instability and hostility toward private property rights in much of the world, their importance should not be ignored.

The legal and financial institutions of the US are indebted to the longstanding and primarily orderly system of property registration. As a result, US capital markets are well-established and developed. The ability to mortgage, lien, and otherwise encumber real property is clearly defined under the US legal system. Beyond the boundary, ingress/egress, liens, encumbrances, mineral rights, and other practical considerations documented under the title system, this system exists to protect an important belief, the right to protect one's financial capital.

Clear ownership rights foster an efficient land marketplace, creating clarity in valuations and arguably maximizing the productivity of any asset class. Landowners, secure in continued use and enjoyment, are more willing to make improvements to the property, such as creation and maintenance of roads and the planting and management of trees. The title system allows an owner to access credit, using real estate as collateral. It should be noted that timber is classified as realty under the Uniform Commercial Code, making standing timber mortgageable/securitizable. For the government, title registries provide tax revenues, in

the form of property taxes and transfer taxes (Grogan, 1953; also, *Epstein v. Coastal Timber Co.*, 711 S.E.2d 912 (S.C. 2011)).

4. Problems of Ownership and Eminent Domain

This rosy picture of title recordkeeping is not meant to imply that there are no land ownership related problems in the US. As in any piece of real estate, adverse possession, boundary disputes, issues regarding indigenous people, and multiple other issues can occur. Inheritance and estate questions related to land ownership can be lengthy, complex, and costly (See, for example, Johnson Gaither, 2016; also, Partition of Heirs Property Act, 2010). Questions of lien priority and other security related issues arise (For a discussion of timber deeds, see, Vernon, 1999; also, *Epstein v. Coastal Timber Co.*, 711 S.E.2d 912 (S.C. 2011)). There is a well-developed body of law to assist with resolving these issues (See, for example, *Regions Bank v. Lowrey*, 101 So. 3d 210, 221 (Ala. 2012); also, *Regions Bank v. Dean*, Alabama Court of Appeals (February 6, 2009)).

Land is not entirely immune from a government taking in the US. Governments have the express power to condemn title for public purpose. But with timber investment tracts, defined for this article as larger than 1000 acres (405 hectares), these problems rarely encumber an entire tract. The geographic scale of the investment spreads the risk. Investors will be concerned with the risk of condemnation by a governmental body. Eminent domain and due process are heavily litigated areas of the law, producing volumes of precedents and nuances that are highly fact-specific to each case. (See, *Kohl v. United States*, 91 US 367 (1875)).

The takings power of municipalities, counties, states, and the federal government is limited and can be reduced to two basic premises: was due process followed, meaning, were the owner's rights protected through the use of proper procedure, and, what is the meaning of just compensation, or did the owner receive fair value for his loss? The owner has the right to challenge the condemnation of property in court and has the right to an appeals process. Unlike the sovereign powers of many other nations, governmental bodies in the US are constitutionally forbidden from taking property from one individual for the sole purpose of transferring it to another; there must be a public benefit and purpose, such as building a road or railroad. (See, e.g., *Kelo v. New London*, 545 US 469 (2005)).

Rights to land ownership and valid title survived one of the darkest episodes in US history. Despite Civil War era confiscation orders, title was not transferred and remained with the original holder, if proper condemnation procedures were not followed. The original landowner could sue the US government for return of its property. The sovereign immunity of the US cannot be invoked to deny a citizen's rights (*United States v. Lee*, 106 US 196 (1882) (related to the creation of Arlington National Cemetery)).

Property rights trump criminal sanctions in some instances. In its February

2019 *Timbs v. Indiana* (586 US ___) ruling, the Supreme Court found in favor of a heroin dealer and upheld his private property rights against the excessive and unlawful seizure of his automobile, which was acquired with legitimate funds. *Timbs*, albeit a criminal case, represents an important and current reminder of the undeniable nature of an individual's right to own property and that the government is limited in its power to strip an individual of those rights.

5. Roots and Wings: Timber, Property and the Founding Fathers

The timber and wood products industry in the Southern US predates the nation and has grown to be one of the most important economic sectors in the region. The US government has gone so far as to designate the sector as vital to the nation. In response to the recent COVID-19 crisis, on March 19, 2020, the US Department of Homeland Security issued federal guidance on industries critical to infrastructure and security, which included “workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products.” (Hestad, 2020). This designation reinforces the authors' contention that the timber industry's importance to the US should be considered as a benefit when evaluating the investment value of the asset class.

This importance began with the earliest settlers and explorers. Two centuries before the Constitution was ratified, the Conquistador Hernando de Soto in 1539, and Sir Walter Raleigh, in 1584, separately noted the value of the forests from Florida to the Carolinas for military purposes and naval stores such as pitch and tar. The first recorded shipment of pine products left Virginia in 1608. Water-powered sawmills are documented in Virginia as early as 1714.

The wood products industry, in its broadest terms, has grown with the Southern US, covering several hundred million acres of land in the region. In some qualifying circumstances, government programs provide subsidies to promote certain species (King, 2017), such as the 4 million acres participating in the US Department of Agriculture Longleaf Pine Initiative (USDA 2010-present). The longleaf is the species Hernando de Soto would have seen in his 16th century expedition. Along the York River, very close to the 17th century Jamestown settlement, there are still sawmills and paper mills. The deer, fish, and fowl that allowed the earliest settlers to survive continue to support the rural economy through hunting leases and other recreational purposes. As a further example of the diversity of timberland and its owners, one former US President owns a Texas wholesale nursery tree farm, *Lone Star Trees* (<https://lonestartrees.com>). The State of Georgia (one of thirteen States in the Southern forestry region) has 24.2 million acres of timberland (*quantified by McClure, 2019*) and lists more than 5000 products in the sector, nearly \$36 billion in annual (2018) economic impact, and 147,380 people employed in the industry. A recent example of government policy recognizing the value of the asset class to its economy was demonstrated is the recently passed Georgia 2018 tax reform state constitutional

amendment, “Amendment 3,” Governor Nathan Deal noted:

Georgia’s working forests generate significant economic investment in our local communities due to the contributions of those who replenish and protect our natural resources. This legislation supports our timber growers and lessens the economic burden of producing quality products that sustain numerous industries, from construction to manufacturing (Georgia Amendment 3, 2018).

The earliest settlers came from an agricultural system that valued land, trees and property. The importance of trees and land is openly acknowledged in traditional estate management. For example, when David Manners, the 11th Duke of Rutland, whose family traces his roots back a thousand years, plants a tree on his 16,000-acre (6475 hectares) English estate, he considers what it will look like in 300 years (Doughty, 2019; Reginato, 2017). The European estate system, from which the Colonial American system evolved, is inextricable from land and relies on a long-term investment strategy for continuity and survivability (*See, e.g., Church of England, 2019*. The Church of England has been investing in US Southern forestry as part of its multi-century investment strategy).

The founders of the US wanted to create a new system of government, while maintaining certain attributes of the British system. Among the principles that did not change was respect for property. For example, President George Washington was a surveyor before he was a revolutionary army general, surveying his first tract of land at the age of 17 in Virginia.

The drafters of the Declaration of Independence in 1776, did not use the word, “property” in the famous statement, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” (United States, 1776). If one researches the intentions of the founding fathers, however, it becomes clear that the protection of private property was an implied and crucial inclusion for the new government.

The papers of President John Adams emphasized the conjoined nature of property and freedom, as described in 1787:

Property is surely a right of mankind as really as liberty ... The moment the idea is admitted into society that property is not as sacred as the laws of God ... anarchy and tyranny commence. Property must be secured, or liberty cannot exist.

(Adams, compiled 1850-1856)

According to President James Madison’s beliefs, the government existed for the purpose of protecting property:

Government is instituted to protect property of every sort. This being the end of government, that is not a just government, ... nor is property secure under it, where the property which a man has ... is violated by arbitrary

seizures of one class of citizens for the service of the rest. As a man is said to have right to his property, he may be equally said to have a property in his rights.

(Madison, 1792)

6. Contracts, Property and the Constitution

The drafters of the Constitution, Bill of Rights, and subsequent Constitutional Amendments were explicit in their treatment of property. Property is essential to prosperity and freedom. Throughout the common law (case law), the Constitution, and subsequent state legislation, the principles that commerce should be allowed to prosper between parties to contracts and that property is valuable and should be protected are recurring themes (See, Pope, 1910). In 1819, in *Trustees of Dartmouth College v. Woodward*, the Supreme Court upheld a 1769 Colonial charter. The wording of the Court made plain the respect for these rights, stating, “It is too clear to require the support of argument that all contracts and rights respecting property, remained unchanged by the revolution.” (17 US 518 (1819)).

Contract is among the oldest forms of law extant. People have needed binding trade obligations for as long as there has been commerce. The word “contract” originates from the Latin, *contractus*. The Romans had a method, the *stipulatio*, by which parties could agree to binding obligation as long as it was not positively unlawful (Watson, 1984). In drafting the Constitution, the founding fathers essentially transplanted this principle to the new nation (*For thorough explanation of the theory of legal transplants, see, Watson, 1974; also, Watson, 2000*). The Contracts clause provides that no state shall make any law that impairs the obligation of contracts (United States Constitution, Art 1, §10). Thus, freedom of contract is expressly protected in the Constitution.

Property is specifically protected in two separate Constitutional Amendments. The Fifth and Fourteenth Amendments protect individual rights, through the Due Process, Takings, and Equal Protection clauses. The Fifth Amendment, vis-a-vis the federal government, provides,

No person ... shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(United States Constitution, Amendment 5)

The language of the Fourteenth Amendment reiterates the importance of property in its assertion of Equal Protection rights as it pertains to the individual states:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdictions the equal protection of the laws.

(United States Constitution, Amendment 14)

From these provisions, the foundation of the rule of law is created, and some basic protections emerge for US citizens that do not exist elsewhere:

- 1) Life, liberty, and property are rights protected at the highest level of government;
- 2) Contracts are binding, enforceable, and the government should not impair their obligations; and
- 3) The government cannot take property without due process of law and just compensation.

7. Flexibility and Commercial Activity

Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force.

United States Fidelity and Guaranty Co. v. Guenther (218 US 34 (1930))

One example of how contracts and commerce evolve over time in an economy is the variety of legally recognized business entities available to hold property or engage in commercial activities in the US. Legal entities are persons under the law and can have independent taxpayer identification numbers, open bank accounts, own property, and enjoy many of the legal rights and privileges of natural persons. “Business entities,” as a subject, is a large area of the law; for example, an entire title, title 14 of the Georgia code is devoted to Corporations, Partnerships and Associations (Official Code of Georgia Annotated, Title 14). When deciding how to most efficiently hold a fixed asset or structure a business, several options are available to forest landowners¹:

- C Corporation (*for example*, O.C.G.A. Title 14, Chapter 2)
- S Corporation (26 USC. §§ 1361-1379)²
- Limited Liability Company (“LLC”) (*for example*, O.C.G.A. § 14-11-100 et seq.)
- Partnership (*for example*, O.C.G.A. § 14-8-1 et seq.)
- Limited Partnership (“LP”)
- Limited Liability Partnership (“LLP”) (*for example*, O.C.G.A. § 14-9-100 et seq.)
- Limited Liability Limited Partnership (“LLLP”)—not available in all states
- Individual, direct ownership, sometimes called a sole proprietorship
- Trusts (*various forms*)

¹Laws vary in individual states as to the legal requirements for formation and structure of each type of entity. Legal and tax advice should be sought based on an individual investor’s circumstances and requirements. It should be noted that business entities is an entire field within the practice of law. This information is included and intended to provide a very general and introductory explanation of an important and immense area impacting commerce.

²Some dispute that the S corporation is a separate category of business entity, insisting that an S corporation is a C corporation which has elected for subchapter S treatment, such as flow through taxation. There is US citizenship or residency requirement of all S corporation shareholders, of which there can only be one class of shares and no more than 100 shareholders.

The four-hundred-year history of the Southern US forestry and timberland sector also serves as an example of a symbiotic public/private environment, where public policy factors such as rural economic development, land access, and wildlife habitat concerns can coexist and prosper with commercial land use. As consumer demand and the agricultural economy has changed, the land, as a fixed asset, has been able to shift its produce to timber and other income streams, protecting the investor. At times, in certain states, timber has been the most valuable crop (Kelley, 1985). It is the flexibility factor, the ability to change land use easily, that distinguishes Southern US timberlands from many of its domestic equivalents in California, Oregon, and Washington, as well as its European counterparts (*Cf., the development and sustainability of forestry in the US Pacific region, see, Kibel, 1996; and cf., Maine, Correia, 2010*). In other regions, if land is designated as forestland, it must remain forestland (Chiavari & Lopes, 2017). Some countries, such as the United Kingdom, require permits to fell *individual* trees in private gardens; this is mandated by the United Kingdom Forestry Commission. Such regulations limit the ability to change land use easily to respond to changing conditions.

The Southern US, in contrast, allows for flexible land use with limited zoning restrictions (*For a discussion of the importance of zoning in due diligence, see Markoff, 2017*). Zoning regulations, set by county and municipal governments, which seek to protect appearances and property values, are also intended to promote the highest and best uses of property.

In most rural areas, agriculture and timberland are the highest and best use of the land. Even within agroforestry, there is wide diversity of use, which can coexist with traditional tree farms. Blueberries, chickens, and pigs rarely complain about pine trees, meaning that timberland owners rarely face use challenges from neighbors. This also means that if a timber producer wants to shift to a different form of agriculture, this change of use may not require a zoning variance. In fact, much of the area that is used for growing trees today in the Southern US was previously planted in cotton and other row crops (*Cf., see, De- zember, 2018*). Former naval stores or cotton lands may today be used for pulpwood and sawtimber production, grazing, and/or other agricultural use. In certain locations, population shifts may make the property suitable for residential, commercial, or resort development. Similarly, mineral rights or energy applications may replace, or supplement traditional forestry uses in certain parcels. The flexible, adaptable ownership options and underlying political structure make Southern US timberland an attractive asset class for investors pursuing a long-term or multigenerational strategy (*See, Zinkhan et al., 1992; and Zhang et al., 2012*).

8. Recreational Use, Trespass, and Premises Liability

Large tracts of timber provide numerous recreational and wildlife opportunities. In promoting its Longleaf Pine Initiative, the US Department of Agriculture as-

served:

When restored to full ecological function, longleaf pine forests are among the most diverse forest ecosystems in the world. Longleaf pine forests provide unique wildlife habitat, supporting bob white quail, wild turkey, and Florida black bear. There are 36 species—including the endangered gopher tortoise, eastern indigo snake, and red-cockaded woodpecker that are dependent on the longleaf pine ecosystem. Longleaf pine forests are also more resistant to insects, disease, fire, and other risks than other southern pine forests.

(United States Department of Agriculture, Longleaf Pine Initiative, 2010, as amended; see, *Mattoon, 1922*; also, *Secrets of the Longleaf Pine, 2015*)

Forestlands provide environments generally suited to outdoor pursuits, ranging from hunting to *Shinrin-yoku* (forest bathing). These uses raise additional questions about the land and liability. As a public policy matter, the government would like to encourage open access to private forestland to individuals (*For a detailed discussion on the necessity of economic analysis in national forest management, see, Jackson, 1989*). Balancing the competing interests of access and property rights has been well established through statutes and case law.

A common question landowners and prospective investors ask lawyers is what is the legal obligation or liability owed to a person entering real property? In simple terms, how large is the premises liability risk? In most circumstances, a person has no right to enter land belonging to another. Unlike the rambling rights of way and bridleways common to the United Kingdom, most private property in the US is closed to the public, “No trespassing.” The right to exclude others is accepted as within the definition of private property (*Black’s Law Dictionary*). A person entering such property without permission is generally guilty of the crime of trespass and may also be responsible under civil statutes for damages arising under tort (*Kaiser, 1955*). There is generally no right to roam or ramble in the US, in contrast with many other jurisdictions.

In most states, no duty of care is owed to a trespasser, other than not to willfully, wantonly, or maliciously cause injury. In lay terms, this means one cannot set booby-traps to protect private property. The blanket prohibition on booby-traps is a widely-accepted rule of law, even included in the Geneva Convention (*International Committee of the Red Cross, 1949*). Yet the traps persist, and in a 2013 Pennsylvania incident, both the trespasser and the landowner received criminal citations related to a paint bomb on the opening day of deer season. The landowner was cited with criminal mischief and criminal harassment. The hunter received a citation for trespass (*Hansen, 2014*).

What do these trespass statutes mean from a liability perspective? Barring willful or wanton conduct on the part of the landowner, the landowner will incur no liability for accident or injury to persons on the property without permission.

Recreational leases often form important income streams for landowners, and

people will enter property lawfully, with permission. So, what liability arises in such instances? To an invitee, a landowner owes a duty to exercise reasonable care not to injure, to warn of any known hidden dangers, or of which the landowner should be aware of in the exercise of reasonable care. When charging a fee, the standard of care can be higher. In these circumstances, a waiver of liability may be drafted by local counsel to be signed by recreational users before any leisure activity.

Additionally, to limit liability to landowners and to encourage the use of land by more members of the general public, many states have enacted Recreational Property Acts (“RPA”) (*For example*, O.C.G.A. § 51-3-20 et seq.). The RPA specifies that an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes may not be held liable for personal injuries resulting from unsafe or defective conditions existing on the premises, unless such injuries resulted from willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity (*South Gwinnett Athletic Assn. v. Nash*, 220 Ga. App. 116, 117 (1) (469 SE2d 276) (1996)). The duty of care owed under the RPA is higher when a fee is charged related to recreational use, but local counsel should advise on the best preventative and protective measures in each instance, including the wording and use of waivers (*Ibid*).

These statutes have been interpreted to protect a landowner from liability, even in the event of a death from a man riding a four-wheeler who was accidentally trapped in a well. No duty of care owed by the landowner. No liability for the death. Given the applicability of the statute, Mrs. Handberry “would not be entitled to relief under any state of provable facts for her claims.” (*Handberry v. Stuckey Timberland, Inc.*, Georgia Court of Appeals, A17A1944 (2018)).

These examples demonstrate how statutes, policies, and practices tend to shield the owners of real property from liability. Thus, timberland investors benefit from the many systemic protections afforded in the Southern US.

9. Discussion and Conclusion

Private land property rights are integral to the socioeconomic fabric of the US. As an asset dependent industry, the US timberland sector depends on property rights to protect the value of investments. As public policy, such rights perpetuate an environment that is welcoming to business. For investors evaluating risks, engaging in due diligence, and considering where to deploy capital, the fundamental protections discussed in this article, such as the existence of alienable, documentable ownership, and related property rights, add to the attractiveness of an investment in Southern US timberland. Such rights are essential for creating stability and security. The rule of law protecting individual property rights permeates the regulatory, judicial, economic, and political climate of the Southern US, underpinning its position as the world’s most important wood product supplier and premier timber investment destination.

This commentary has outlined the history of, protections afforded to, and the economic importance of the timber industry to the US. From the orderliness of registering an ownership interest to the access to capital to the freedom to change the nature of one's business, the legal and business environments have evolved and adapted over this period to protect property rights. In an unstable world, the Southern US timber industry continues to be a vital part of the region's economy, more than four centuries after the first wood products were exported from Virginia. Forestry, wood products, and manufacturing have even been designated as critical to national security. These attributes enhance the long-term value of timberland investments as an asset class.

Conflicts of Interest

The authors declare no conflicts of interest in the publication of this paper.

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