

WARNING SIGNS FOR RIP CURRENTS

*** Legal Issues ***

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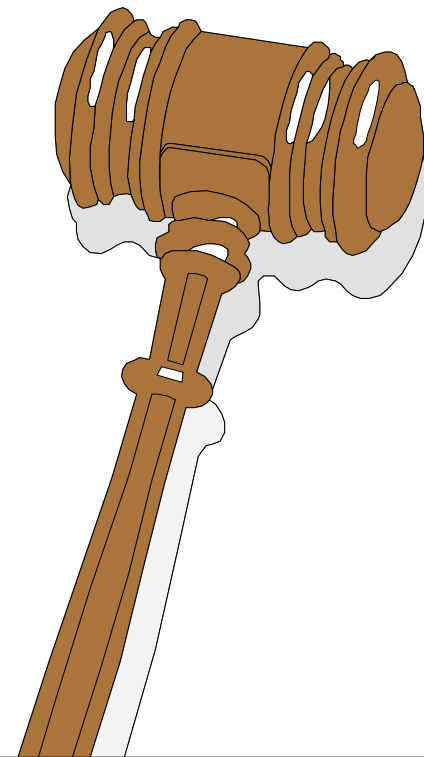
MS-AL Sea Grant Legal Program

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NEGLIGENCE

Four elements:

- Duty of care;
- Breach of that duty;
- Injury that is
- Caused by the breach.



THE QUESTION

What legal duties do oceanfront landowners – hotels, for instance – have to their guests with respect to rip currents?



The Answer Depends on Property Ownership



"I'll save you!"

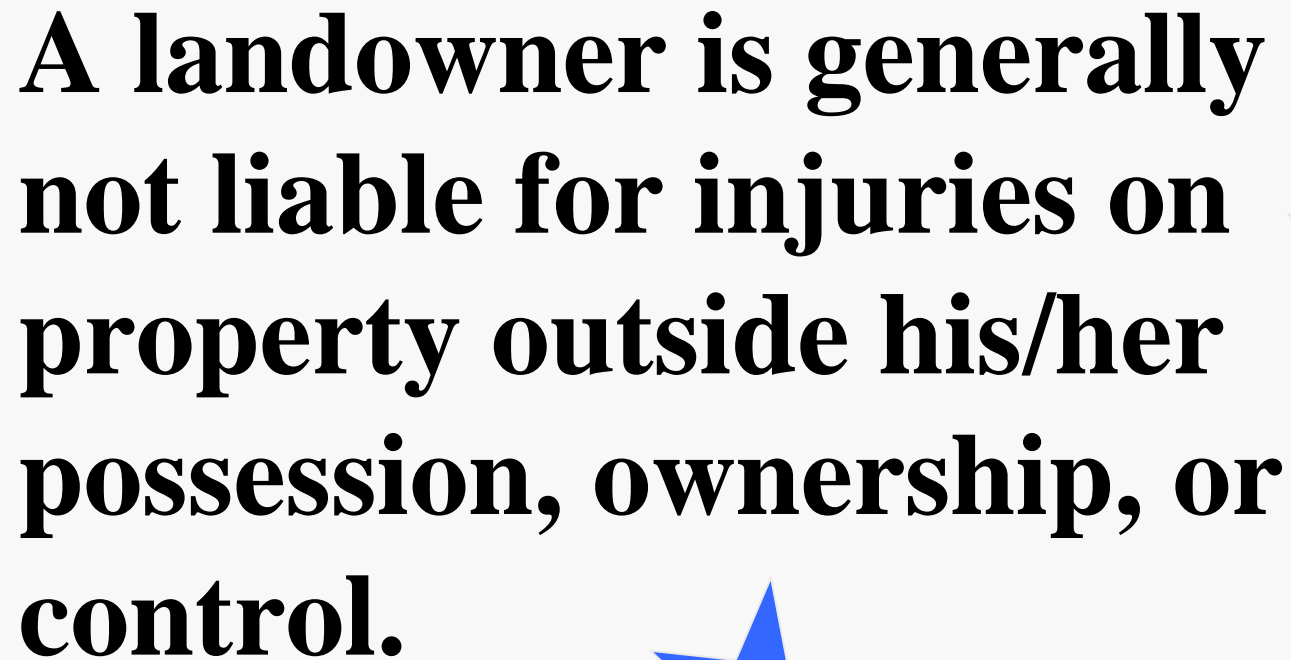
A landowner
has a duty of
care to people
who are on
his/her
property. But...

A landowner has no duty to warn
of dangers beyond his/her
property.

You should
watch out
for the...
oh, never
mind



Because of **THE GENERAL RULE**



A landowner is generally not liable for injuries on property outside his/her possession, ownership, or control.

The High Tide Line is the boundary between public and private property

Seaward of high tide line is state or federal property.



Land above the high tide line may be owned by anyone.

Hotels, for instance.

Rip currents occur below the high tide line.

Thus, rip currents occur on state or federal property - outside of an adjacent landowner's possession, ownership, or control.

I should never have entered this state or federal property



For I cannot sue the adjacent landowner if I am injured by this wave, which he cannot control

So...

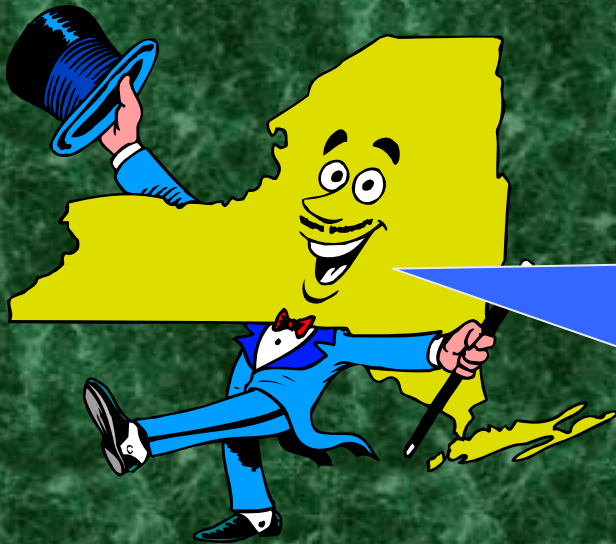
The owner of adjacent private beachfront property generally has no legal duty to warn people on his/her property about rip currents on the public beach.

There are no cases directly on point in Alabama or Mississippi.

However, courts have affirmed this rule in other states.

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A New York court ruled that an innkeeper who exercises no management, supervision, or oversight of a nearby public beach does not have a duty to warn its guests of rip currents even though the hotel encourages and facilitates use of the beach by its guests.



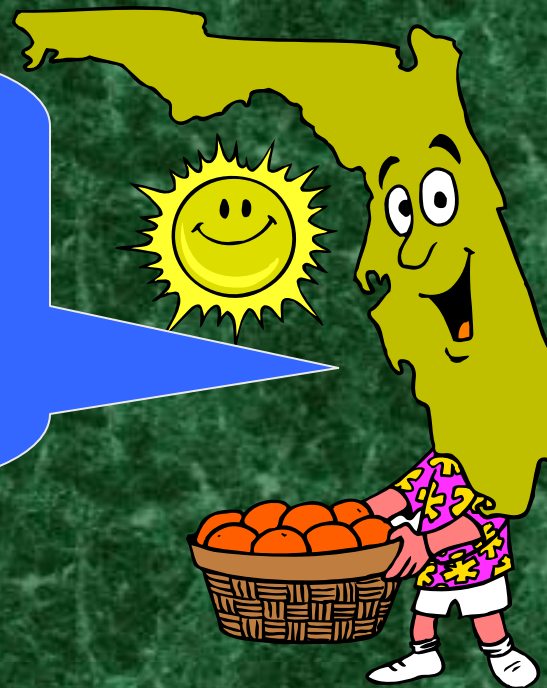
Such a duty would create almost unlimited responsibility to warn of all manner of hazards over which innkeepers have no control.

Darby v. Compagnie Nat'l Air France, 96 N.Y.2d 343 (N.Y. 2001)

A Florida court held that an entity that does not control the area or undertake a particular responsibility to do so has no common law duty to warn, correct, or safeguard others from naturally occurring, even if hidden, dangers common to the waters in which they are found.

So a beachside innkeeper in Florida has no duty to warn his guests of naturally occurring surf conditions off of a public beach.

Poleyeff v. Seville Beach Hotel Corp., 782 So.2d 422 (Fla. Dist. Ct. App. 2001)



**But the real action has
been in California...**



**I have 840 miles
of shoreline and
195,000 lawyers
– you do the
math!**

**In the leading case,
*Swann v. Olivier**, a guest
at a private beach party
was injured in the surf
and sued the private
landowners.**

***22 Cal. App. 4th 1324 (Cal. App. 1994)**

The court held:

The owners of a private beach owe no duty to warn guests of rip currents and other hazards in the ocean beyond the beach, when the owners do not create or control the hazards or commercially benefit from the guest.



A later California case, similar to *Swann* but with a hotel as defendant, held:

A hotel has no duty to warn guests of danger of swimming in the ocean even though it benefits commercially from the adjacent beach.

Princess Hotels Int'l v. Sup. Ct., 33 Cal. App. 4th 645 (Cal. App. 1995)



**THERE IS
SOME LAW TO
THE
CONTRARY!!!**

An unusual case in California – *Pacheco v. U.S.**

- 11-year-old girl caught in rip current; mother and grandmother jump in to rescue; all drown.
- U.S. Forest Service beach controlled by private permittee, who knew of rip current danger but did not warn.
- Court: possible duty to warn!!!

*220 F.3d 1126 (9th Cir. 2000)

Why did the *Pacheco* case turn out differently? Creation and Control

- Creation of danger:
Supplying perforated bucket = encouragement to use beach and implication of safety
- Control of beach: Path, signs, rules = “open public display” of control



The court held that, under the circumstances, the government and its permittee could have had a duty to warn of rip currents.



The court also said that if there was a duty, it could have been satisfied by posting or distributing warnings.



**RIP
CURRENTS**

SUMMARY FOR PRIVATE LANDOWNERS

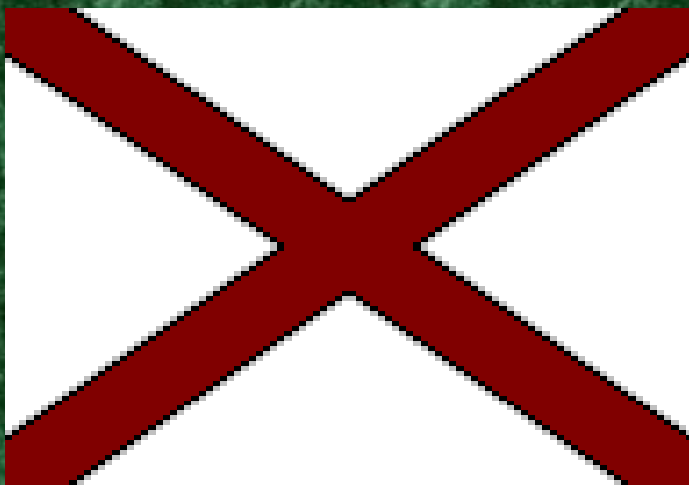
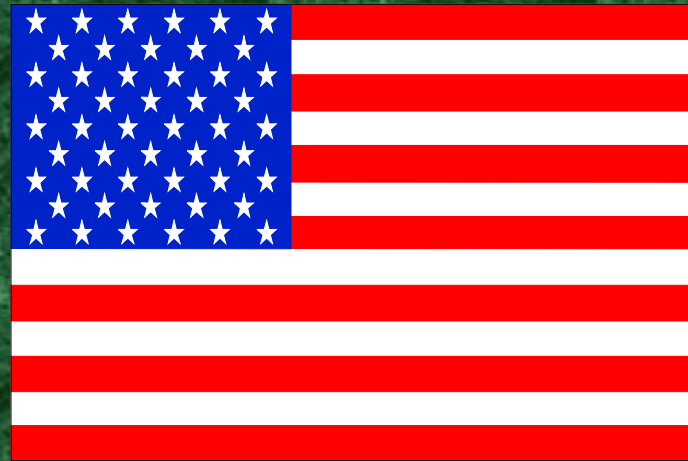
**NO DUTY TO WARN OF OCEAN
HAZARDS, IN GENERAL.**

There may be a duty to warn if:

- Landowner creates the hazard, or
- Landowner controls the area containing the hazard.

If the duty exists, it can probably be satisfied by adequate warning.

Next Topic: GOVERNMENT LIABILITY



The government owns the property seaward of the High Tide Line, which is where rip currents occur.



**So I can sue
the
government?**

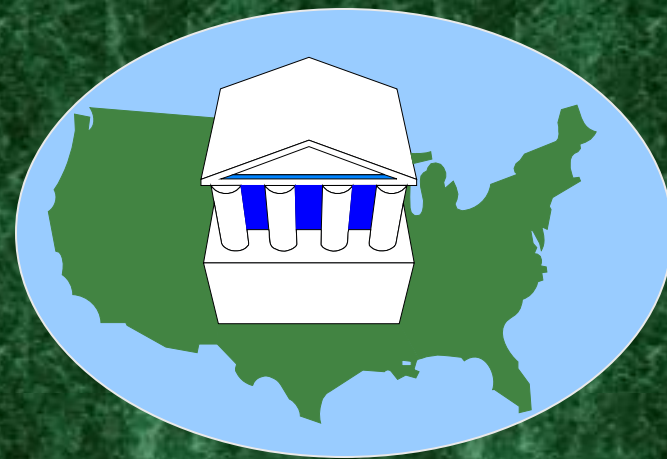
GENERAL RULE: SOVEREIGN IMMUNITY

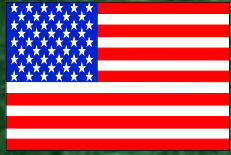


**No! The
sovereign
cannot be sued
without its
consent.**

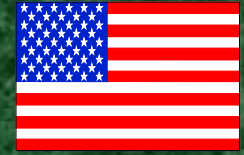
TORT CLAIMS ACTS

But...the federal government and many states have consented to be sued for torts (like negligence) in some situations.





Federal Tort Claims Act



- U.S. liable for personal injury or death:**
- **Caused by negligence of its employees,**
 - **Acting in scope of employment,**
 - **If private party would be liable under the law of the place where the negligence occurred.**

28 U.S.C. § 1346(b)(1)



Mississippi Tort Claims Act



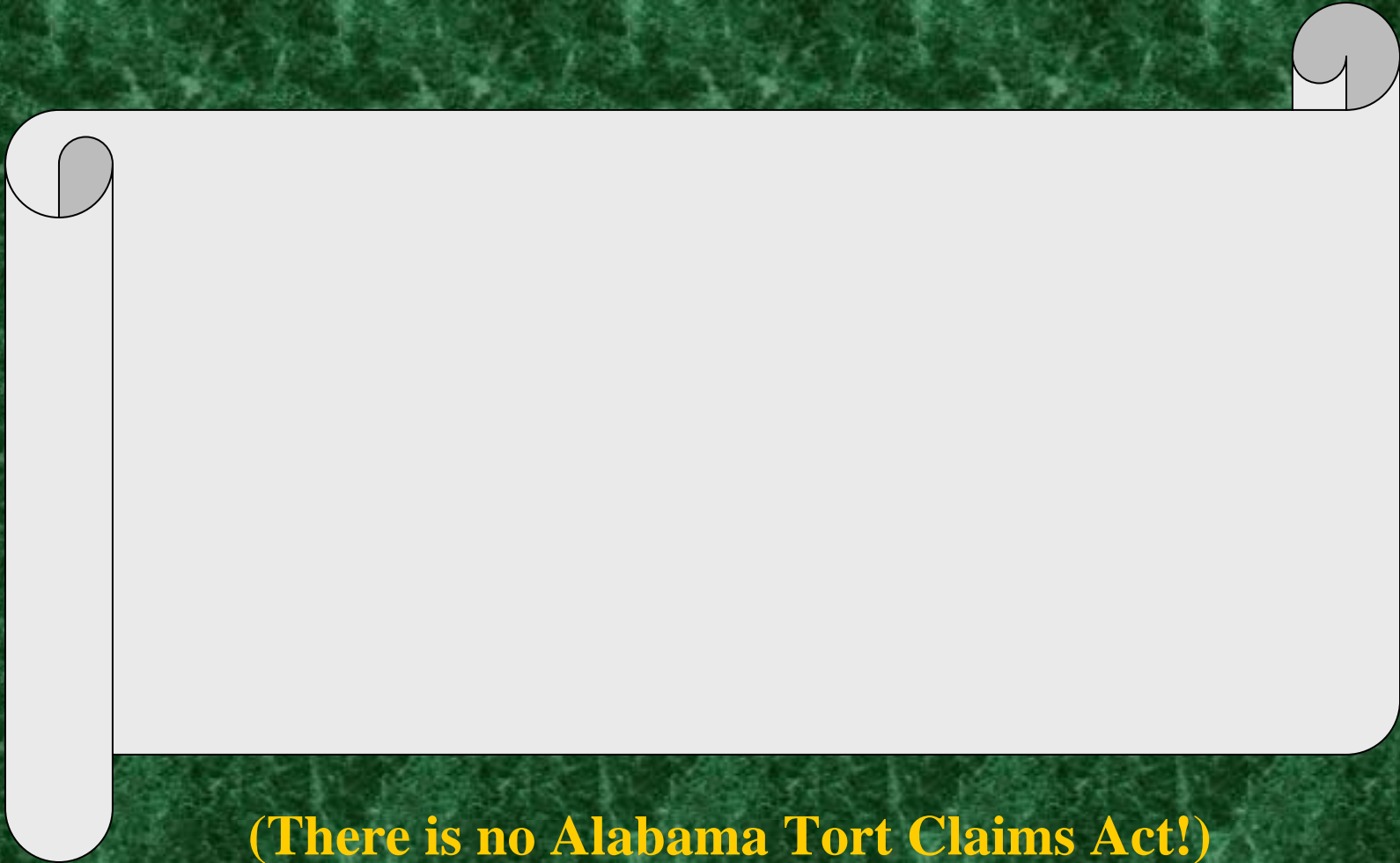
State liable for torts:

- **Of governmental entities and their employees,**
- **Acting within the course and scope of employment.**

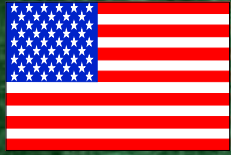
Miss. Code § 11-46-5(1)



Alabama Tort Claims Act



(There is no Alabama Tort Claims Act!)

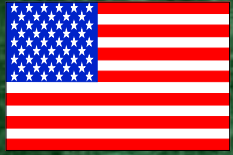


Exception (U.S. and Mississippi):



Government not liable for injury claims based on “the exercise or performance or the failure to exercise or perform a discretionary function or duty”

28 U.S.C. § 2680(a); Miss. Code § 11-46-9(d)



Discretionary Function

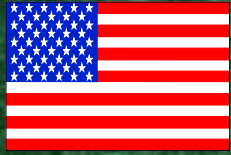


To be
discretionary,
an action must
involve an
element of
*judgment or
choice.*

Signs?

Or no
signs?



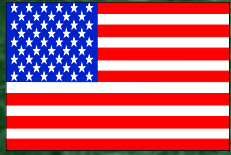


Discretionary Function



**Not
discretionary if
*statute,
regulation, or
policy
prescribes
course of
action.***





Discretionary Function



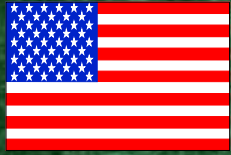
Discretionary functions, once undertaken, must be performed with reasonable care.

BAD



GOOD





Discretionary Function



Whether the discretionary function exception applies is a very fact-sensitive question.



Court
decisions
vary.



A Mississippi Wrinkle



Even if the duty is otherwise discretionary, the state may still have a duty to warn of a dangerous condition when it has actual or constructive notice of the condition.

Miss. Dept. of Transp. v. Cargile, 847 So.2d 258 (Miss. 2003)

SUMMARY FOR GOVERNMENT LANDOWNERS

SOVEREIGN IMMUNITY FROM SUIT.

TORT CLAIMS ACTS (U.S. & Mississippi):

- **Waive immunity for torts, like negligence.**
- **Keep immunity for discretionary functions/duties.**
- **Fact-specific inquiry.**

In Mississippi, possible state duty to warn of dangerous conditions.

QUESTIONS?

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