SURFACE WATER RUNOFF - RIGHTS AND RESPONSIBILITIES UNDER ALABAMA LAW

I. INTRODUCTION

Imagine these scenarios:

You are at the stage of your life where you have purchased property and are in the process of building your dream home. One day your neighbor contacts you alleging that your construction and landscaping is causing increased water runoff and damage to his home and property.

Or imagine the flip side:

You have lived in your house for years with no water issues. Suddenly, you are dealing with damaging water runoff right after every storm as a result of construction on your adjoining neighbor's property.

In each situation, what is a party to do? Can a person be restrained from building his dream home on his own land? Does a person have to lay at wake at night worrying about water damage during every hard rain as a result of construction next door?

In Alabama, the answer often depends on answers to questions such as:

-Are the properties located in a municipality or unincorporated area?

-Has the natural flow of surface water been altered?

-Has the amount of surface water been altered?

-Has the velocity of surface water being discharged been altered?

-Has the change in the surface water unduly burdened and damaged the adjoining landowner?

-Could the alteration to the surface water runoff been done in a less damaging manner?

This article will address the standard of responsibility for surface water runoff in Alabama and provide clarity on landowners' rights and responsibilities in these type of situations.

II. GENERAL SURFACE WATER RULES ACROSS THE COUNTRY

States across the country have generally followed one of two rules involving surface water runoff. The first is the civil law rule ("Civil Rule"). The second is the common law rule, or as it is also known, the common enemy rule ("Common Enemy Rule").

The Civil Rule provides, in general, that a landowner may not interfere with the natural flow of surface water in such a way so as to injure his neighbor as the lower landowner is only required to receive water naturally flowing from the upper landowner. This rule also recognizes that a lower landowner is prohibited from disrupting the flow of water which naturally flows from the higher land. Mitchell v. MacKin, 376 So.2d 684, 685 (Ala. 1979).

The Common Enemy Rule provides, in general, that because surface water is a common enemy to each landowner, every person may take whatever action they deem necessary to protect his property from surface water, even if such action damages his neighbor. Mitchell, 376 So.2d at 686.

III. SURFACE WATER RULES IN ALABAMA

Unfortunately the strict application of each rule can cause unjust results. For example, the strict application of the Civil Rule would essentially prevent any development or any change in the natural state of the property. Likewise, the strict application of the Common Enemy Rule would allow adjoining landowners to unreasonably injure each other with surface water runoff with no repercussions. So where does Alabama fall in regard to surface water runoff issues?

Alabama initially recognized and applied both standards depending on whether the properties were located in a rural area or in an incorporated city or town. Specifically, Alabama initially applied the Civil Rule in rural areas and the Common Enemy Rule in incorporated cities and towns. See Johnson V. Washington, 474 So.2d 651, 653 (Ala. 1985). Courts' rationale for employing different standards was the recognition that development needed to be encouraged in incorporated cities while rural areas should not give the same priority to development over concerns of landowners regarding water runoff.

Over time, decisions in Alabama have recognized that the strict application of each rule would result in unjust decisions. Therefore, as set forth in this article, Alabama has evolved to recognize a modified version of each rule and that the location of the property, whether in a rural area or in an incorporated city of town, does not prevent a modification of such rule being applied.

A. THE CIVIL RULE IN ALABAMA

In Hughes v. Anderson, 68 Ala. 280 (1880), the Alabama Supreme Court recognized the potential hardship in strictly following the Civil Rule when addressing the following factual situation.

> The plaintiff and the defendant were coterminous landholders, each engaged in agriculture; the plaintiff owning the lower lot and the defendant owning the upper lot. Through the lands of the plaintiff, and near the dividing line, flowed a natural stream or branch, which was the natural outlet for a part, at least, of the water which fell on defendant's land. The water flowed naturally from the defendant's land upon the lands of plaintiff, and across a portion of it into the running stream. It flowed slowly, not in a collected body, but scattered over the surface. In its natural state, part of this water was absorbed, and part evaporated before it reached the lands of

> plaintiff. The Defendant subsequently created ditches on his property to collect all this surface water into one channel, thereby draining his own lands, and **causing the water to flow much more rapidly, and in one body, into the branch on plaintiff's land.** This emptied the water off defendant's land much sooner, and, as a consequence, **channeled it much more rapidly, and in increased volume, on the lands of the plaintiff,** thereby flooding a portion of his land and rendering them uncultivable. **We have, then, the case where plaintiffs must submit to an inconvenience and injury, or a defendant must forgoe a beneficial improvement.**

Hughes, 68 Ala. at 284-285 (emphasis added).

The Alabama Supreme Court in Hughes first recognized that an upper landowner has an implied easement for drainage across the land of the lower landowner for "waters which flow naturally, without any act of man". Hughes, 68 Ala. at 284. In determining how to balance the interest of each landowner, the court in Hughes adopted the following language relating to surface water rights:

> Among the many discussions of this question, we approve and adopt as our own the language of WOODWARD, J., in Kauffman v.Griesemer, 26 Penn. St. 407. He said: "Almost the whole law of watercourses is founded on the maxim of the common law, aqua currit et debet currere. Because water is descendible by nature, the owner of a dominant or superior heritage has an easement in the servient or inferior tenement for the discharge of all waters which by nature rise in or flow or fall upon the superior. ... This easement is called a servitude in the Roman law, and consists in the subjection of the inferior heritage towards those whose lands are more elevated to receive the waters which flow from them naturally. ... This obligation applies only to waters which flow naturally, without any act of man. Those which come either from springs, or from rain falling directly on the heritage, or even by the effect of the natural disposition of the places, are the only ones to which this expression of the law can be applied. It is not, however, to be understood, that because the flow of water must not be caused by the act of man, that therefore the proprietor who transmits water to the inferior heritage, is not permitted to do anything on his own land--that he is condemned to abandon it to perpetual sterility, or never vary the course of cultivation, simply because such acts would produce some change in the manner of discharging the water. The law intends not this. It prohibits only the immission into the inferior heritage of the waters which would never have fallen there by the disposition of the places alone. It never would nor could refuse to the superior proprietor the right to aid and direct the natural flow. Hence, for the sake of agriculture--agricolendi causa--a man may drain his ground which is too moist, and discharging the water according to its natural channel, may cover up and conceal the drains through his lands--may use running streams to irrigate his fields, though he thereby diminishes, not unreasonably, the supply of his neighbor below--and may clear out impediments in the natural channel of his streams, **though the flow of water upon his neighbor be thereby increased**. ... It is not more agreeable to the laws of nature that water should descend, than it is that

> lands should be farmed and mined; but in many cases they cannot be, **if an increased volume of water may not be discharged through natural channels and outlets**. The principle, therefore, is to be maintained; but it should be prudently applied. ... The plaintiffs had no right to insist upon his receiving waters which nature never appointed to flow there."--Martin v. Riddle, 26 Penn. St. 415; Ang. On Water Courses (7th ed.), sections 108a to 108s; Waffle v. N.Y. Central R. R. Co., 53 N. Y. 11;Williams v. Gale, 3 H. & Johns. 234; Prescott v. Williams, 5 Metc. (Mass.) 429.

Hughes, 68 Ala. at 285-286 (emphasis added).

The Hughes court then weighed the interest of each party and adopted a modified Civil Rule, stating that in Alabama, a landowner may not channel water to flow on a lower landowner that would have flowed in different direction, provided, however, after giving due consideration to his neighbor, he can channel such water that would have naturally flowed in a volume and velocity onto the lower landowner. Hughes, 68 Ala. at 286. The court further recognized that in certain circumstances, additional water may be redirected onto a neighbor's land to such neighbor's detriment, stating that this rule must be weighed against the desire to allow development and progress, that is, that this issue "…must be weighed and decided with a proper reference to the value and necessity of the improvement to the superior heritage, contrasted with the injury to the inferior; and even this license must be conceded with great caution and prudence. It is a questions for the jury to determine". Hughes, 68 Ala. at 286.

As early as the Hughes decision, the Alabama Supreme Court recognized a modified Civil Rule that would, in some instances, allow not only water to be channeled onto a lower landowner different from the natural flow but would also allow such water to be channeled in greater volume and velocity than would normally be received.

Subsequent Alabama Supreme court decisions seemed to limit the ruling in Hughes allowing excessive water to be channeled onto the lower landowner in certain situations. Nininger v. Norwood , 72 Ala. 277, 283-284 (1882) ["Where two fields adjoin, and one is lower than the other, the lower must necessarily be subject to all the natural flow of water from the upper one. The inconvenience arises from its position, and is usually more than compensated by other circumstances; hence the owner of the lower ground has no right to erect embankments, whereby the natural flow of the water from the upper ground shall be stopped; nor has the owner of the upper ground a right to make any excavations or drains, by which the flow of water is diverted from its natural channel, and a new channel made on the lower ground; **nor can he collect into one channel waters usually flowing off into his neighbor's fields by several channels, and thus increase the waste upon the lower fields**." (emphasis added)]; see also Crabtree v. Baker, 75 Ala. 91, 94 (Ala. 1883) ("But the servitude or easement extends only to surface water arising from natural causes, as by the falling of rains and melting of snow; and it does not authorize the proprietor of the higher land, by the collection of water into drains or artificial channels, to precipitate it in increased quantity and volume upon, and to the detriment of the lower land.").

A 1913decision by the Alabama Court of Appeals noted these prior decisions seeking to limit Hughes, but clarified that the rule in Hughes allowing excess water to be channeled onto a lower

landowner in certain circumstances was alive and well. In King Land & Improvement Co. v. Bowen, 61 So. 22 (Ala. Ct. App. 1913), the Alabama Court of Appeals addressed a situation where the plaintiff and his family owned property where they resided and conducted a business running a dairy and raising chickens and crops. The plaintiff alleged that the upper landowner diverted water greater than that which flowed naturally across his property causing plaintiff to sustain damages. Despite recognizing the existence of Alabama case law holding to the contrary, the court in King, citing Hughes, held that, after giving due consideration to the welfare of one's neighbor, in some exceptional circumstances, and in order to promote progress and development, an upper landowner may increase the water runoff onto the land of the lower owner stating:

> …Hughes v. Anderson, supra, holds that **under some exceptional circumstances** he is permitted to increase the burden at a particular point by concentrating into one channel and depositing, at that point, **in greater volume and with greater rapidity and more injury than nature, water which had theretofore naturally flowed** by divers natural channels over a wider area on the same lower estate.

King, 61 So. at 27 (emphasis added).

Subsequently, the Alabama Supreme Court in Vinson v. Turner, 40 So.2d 863 (Ala. 1949), confirmed that the modified Civil Rule set forth in Hughes and King remained the law in Alabama. In Vinson, the defendant owned four acres of land running along a county road. The plaintiffs owned the adjacent property which they farmed and used as a pasture. The plaintiffs' property lay downhill from the defendant's property and both properties were located in an unincorporated area. Ditches ran along the county road and discharged water into a ditch running across the defendant's land. When the County cleaned out the ditch running along the road, the increased water into the defendant's ditch overflowed causing flooding on defendant's property. In order to protect his property, the defendant created an additional drainage area away from the ditch which redirected the water away from the ditch on his property and onto the plaintiffs' property at a location different from the location of the ditch. The plaintiffs alleged the water coming from the defendant's property at the new location damaged their grass and pasture with sand, gravel and other debris.

In addressing the issue of the "rights of adjoining land owners relative to the control and disposition of surface waters where the property of one owner is located at a higher level than that of the other", the court recognized that prior Alabama decisions are not always harmonious but that Alabama clearly follows the Civil Rule. Vinson, 40 So.2d at 864. The Alabama Supreme Court then outlined the rule for surface water rights between adjoining landowners adopting the rationale in King setting out the terms for the modified Civil Rule as follows:

> At common law surface water was regarded as a common enemy, and every landed proprietor had the right, as a general proposition, to take any measures necessary for the protection of his own property against its ravages; and the damages resulting in such cases to adjoining owners were regarded as damnum absque injurai, affording no cause of action. This common-law rule yet obtains in many jurisdiction in this country. But not so in this state. Here our Supreme Court

> long ago adopted, and has ever since continuously followed, the rule of the civil law. This rule is founded in general on a principle of natural right, as embodied in the maxim: Aqua currit et debet currere, ut solebat, Water flows and as it flows, so it ought to flow, as modified and restrained, under the necessities of advancing civilization, by that other principle that the rough outline of natural right must submit to the chisel of the mason that it may enter symmetrically into the social structure. Under this rule, while a person's land is subservient to the adjacent lands of a naturally higher altitude, so far as water is concerned, yet it is subservient only to the extent that nature made it subservient; that is, it is required to receive from such higher lands all and only such water as would naturally flow from them upon it by reason of its natural depression. **The law, however, in the interest of progress and development, under some circumstances does permit the owner of the higher lands, to which the lower land is thus naturally subservient, to control and direct, for purposes of property drainage, by ditches or other artificial means on his own land, the surface water that naturally flows thereon and from it to the lower land, provided he does not thereby cause more or other water to flow on such lower land than it would naturally receive otherwise, and provided, also that in so doing, he acts always with a prudent regard for the welfare of his neighbor. Under no circumstances is he permitted to increase, but under some circumstances he is permitted to distribute, differently from nature, the total quantity of the water flowing naturally from his own to the lower subservient land, by even concentrating it and causing it to flow more rapidly and in greater volume upon the lower land**.
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> In the case cited, Judge Stone speaking for the court said: Defendant had no right, by ditches or otherwise, to cause waters to flow on the lands of plaintiff, which, in the absence of such ditches, would have flowed in a different direction. As to the water theretofore accustomed to flow on the lands of the plaintiff, defendant was not bound to remain inactive. **He was permitted to so ditch his own lands as to drain them, provided he did so with a prudent regard for the welfare of his neighbors and provided he did no more than concentrate the water, and cause it to flow more rapidly, and in greater volume on the inferior heritage.** This, however, must be weighed and decided with a proper reference to the value and necessity of the improvement to the superior heritage, contrasted with the injury to the inferior, and even this license must be conceded with great caution and prudence.

Vinson, 40 So.2d at 864-865 (emphasis added and citations omitted).

Based on the prior decisions, the court in Vinson reaffirmed the modified Civil Rule holding that an upper landowner may alter the natural drainage area so as to drain and even ditch water across his own land onto adjoining land provided the lower landowner is not injured or faced with an increased burden by the increase of water onto the lower land. Vinson, 40 So.2d at 865.

But the court in Vinson did not stop there. It further stated that although prior decisions hold that under no circumstances is an upper landowner allowed to increase the water flow above what the lower landowner would naturally receive, in exceptional situations, water flow may not only be re-directed but actually increase the burden on a lower landowner in a greater volume and rate than would naturally flow when it stated:

> … Hughes v. Anderson, supra, holds that **under some exceptional circumstances he is permitted to increase the burden at a particular point by concentrating into one channel and depositing, at that point, in greater volume and with greater rapidity and more injury than nature, water which had theretofore naturally flowed by di**vers natural channels over a wider area on the same lower ester.
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> This exceptional right or license in the upper proprietor to thus increase the burden on the lower estate, in this particular, must in all cases be exercised, as said with the prudent regard for the welfare of his neighbor, and itself arises only under exceptional circumstances and conditions; and as to whether they in fact exist and as to whether, if they do exist, they are sufficient, to warrant the exercise of the right or license, is to be determined by the jury, in each case, under property instructions from the court, wherein they would be charged with the duty of determining whether the particular drain or ditch, which caused the damage, was necessary to the improvement of the upper land, whether one elsewhere or in some other method would not have reasonably accomplished the same benefit to the upper estate and resulted in, or less, damage to the lower, and whether the value of the improvement to the upper land, as a result, so outweighed the detriment of the lower in particular and general good as to authorized it, and whether the upper owner in digging and locating and directing, on his own land, the drain (first, so shown to be necessary) acted with property care and regard to the rights of the lower owner, such care and regard as would prevent, if he could do so reasonably and consistently with the purposes in view, and if he could not, as would minimize, as far as he reasonably could consistent with such purposes, the damages and injury to the lower estate.".

Vinson, 40 So.2d at 865-866 (emphasis added).

Based on forgoing, the Vinson Court set out the following test for a jury to determine whether, after giving due consideration to the welfare of one's neighbor, an exceptional situation exists so as to allow a party to channel surface water onto an adjoining landowner in greater volume and velocity than naturally exists:

> 1. whether exceptional circumstances and conditions exist as alleged by the upper landowner to allow excess surface water to be channeled onto an adjoining landowner exist and if so;

2. whether the exceptional circumstances and conditions faced by the upper landowner are such that justify the channeling of excess surface water onto his adjoining landowner and if so;

3. whether the particular drain or ditch utilized by the upper landowner defendant was necessary for the improvement of the upper landowner;

4. whether some other method could have been utilized by the upper landowner that could have reasonably accomplished the same result at less damage to the lower landowner; and

5. whether the value of the improvement to the upper landowner so outweighed the detriment of the lower landowner and general good so as to justify it.

Vinson, 40 So.2d at 866.

B. THE COMMON ENEMY RULE IN ALABAMA FOR INCORPORATED CITIES AND TOWNS

In Alabama, it is well established that the Common Enemy Rule applies in incorporated cities and towns. Hall v. Rising, 37 So. 586 (Ala. 1904) (Because artificial conditions are created in the development of towns and improvements located on the lots in such towns, the common enemy doctrine applies in regard to water rights rather than the civil law rule). However, a significant exception to the Common Enemy Rule was recognized by the Alabama Supreme Court in Kay-Noojin Development Co. v. Hackett, 45 So.2d 792 (Ala. 1950). In Kay-Noojin, the plaintiff was a homeowner in the city of Huntsville and the defendant owned and was developing the adjacent property as a residential subdivision. The streets contained in defendant's subdivision were laid out such that rainwater was directed to ditches which in turned deposited the water onto the plaintiff's property. The plaintiff alleged that the defendant, as the upper landowner, deposited the rainwater in greater volume and velocity onto the plaintiff's land thereby causing damage to plaintiff's house and property and sought to invoke the equitable principle wherein an upper landowners may not channel water onto the lower landowner in greater volume and velocity that such property would normally receive.

The court in Kay-Noojin noted that prior Alabama case law made a distinction if property, like the property before the court, was located in an incorporated city or town and that this general rule would not apply to city or village lots where artificial drainage system has been implemented or which, by necessity, must be channeled and drained. Kay-Noojin, 45 So.2d at 795. The Kay-Noojin court recognized that notwithstanding these prior decisions reaching a different conclusion based on property in an incorporated town or city, the court held that an upper landowner who collects surface water and channels it onto a lower landowner when it would normally have been scattered and diffused is responsible for damage caused to the property of the lower landowner regardless of whether the property is located in an incorporated town or city. Kay-Noojin, 45 So.2d at 794; see also, Kay Noojin Development Co. v. Kinzer, 55 65 So.2d 510, 516 (Ala. 1953)

("An upper proprietor who collects surface water into a channel and cast it upon property of a lower proprietor to his damage, when if it were not so collected the water would be scattered and diffused, is liable for the damage though the property is located within an incorporated town or city."); Mitchell, 376 So.2d at 686 (recognizing that although an upper landowner may not channel water to injure a lower landowner in cities and towns, the lower landowner may dam or barricade such channeled surface water to protect his property).

The Alabama Supreme Court subsequently affirmed this this position that the location of property in a incorporated town or city, by itself, is not the deciding factor on whether damages are available due to water damage caused by re-channeling surface water into a naturally occurring waterway. In Mountain Brook v. Beatty, 295 So. 2d 388 (Ala. 1974), a ditch ran across the plaintiff's property that the city of Mountain Brook diverted water into for drainage purposes. The ditch was located in the City of Mountain Brook's drainage system. The City planned a new storm drainage pipe that would increase the amount of water being channeled into the ditch which the plaintiff contended would overflow during heavy rains. The plaintiff brought an action against the City of Mountain Brook seeking to prevent the City from draining across their property through their ditch. The issue before the court was whether the City of Mountain Brook could drain across the plaintiff's property and if so, to what extent. The court first found that the City had the right to drain surface water across the plaintiff's property pursuant to a drainage easement which the City had obtained by prescription from its prior past and continuous use. As such, the review centered around the extent to which the City could drain across the plaintiff's property. The court first recognized that although early Alabama cases held that the Common Enemy Rule applied in incorporated towns such as Mountain Brook, this rule was modified by the Alabama Supreme Court in Kay-Noojin when it ruled the location of the property in a city or town did not determine whether a upper landowner had the right to collect and channel surface water onto and adjacent landowner. Beatty, 295 So.2d at 393. The court also recognized that although "surface water may not be collected in a channel and cast of complainants' land, it is equally clear that the water may be channeled into a naturally occurring water course flowing through a lower owner's land even thought it could not be cast directly on his land". Beatty, 295 So.2d at 393. In other words, the upper landowner may be able to collect and discharge diffused surface waters into a water course, but with limitations. He may not be permitted to overtax the capacity of the water course or drainage channel. Beatty, 295 So.2d at 393. The Beatty Court then recognized that if the City elects to use the drainage ditch on the plaintiff's property, it has a duty to maintain the ditch such that the water directed into such ditch would not cause it to overflow and damage the property of the plaintiff. Beatty, 295 So.2d at 394.

C. THE RULE APPLIED WHEN PROPERTY IS LOCATED IN BOTH RURAL AND INCORPORATED AREAS

As shown above, Alabama follows some variation of the Civil Rule when property is located in a rural area and a variation of the Common Enemy Rule when property is located in an incorporated town. Which rule applies could very well determine not only the outcome of an action, but the rights and the obligations of the parties to a water dispute. So which rule applies if one property is located in an incorporated area and the other property in an unincorporated area?

This specific issue was addressed by the Alabama Supreme Court in Street v. Tackett, 494 So.2d 13 (Ala. 1986). In Street, the upper landowner's property was located in an incorporated city and the lower landowner's property located outside of the city limit. In addressing which rule to apply, the court stated:

> This appears to be the first case where the upper land is in a city and the lower land is outside the city. We believe that an intermediate position should be taken in reaching a decision…. We conclude that the modified civil law rule should be applied in this case, and we hold that the upper land owner can alter the flow of surface water to improve his property: However, he has a duty not to unduly burden the lower property by causing substantial damage and not to unreasonably interfere with the possessory rights of the lower landowner.

Street, 494 So.2d at 15; see also, Holden v. Edwards Specialties, Inc., 62 So.3d 1029, 1034 (Ala. Civ. App. 2009).

D. REMOVAL OF ARTIFICIAL IMPROVEMENT LOCATED IN THE NATURAL WATERWAY

It is clear that Alabama case law recognizes that when water flows in its natural course, an upper landowner does not have an obligation to protect or to take action to protect a lower landowner from the natural flow of surface water. In fact, as far back as Hughes, Alabama case law has recognized that an upper landowner has an implied easement for water flowing in its natural course over the property of the lower landowner. The obligation of the upper landowner, in general, is to refrain from taking any action which would change the natural flow so as to cause damage to the property of the lower landowner. But what about the situation where the upper landowner has previously taken action that protects and reduces the water run off to the lower landowner and subsequently decides to remove this protection, that is, the natural flow of water to the lower landowner is re-instated? This situation was addressed in King v. Adams, 349 So.2d 611 (Ala. Ct. App. 1977). In King, several man-made ponds were located on the defendant's property which were used to catch surface water runoff from the defendants property along with property located at higher elevations. These ponds also kept water from reaching the plaintiff's property even though a natural drainage ditch existed across the plaintiff's property. When the defendant decided to drain the ponds and fill them in, the surface water from the higher grounds began to follow the natural drainage path and drained into the ditch on the plaintiff's property. This was the same path that water runoff followed prior to the ponds being constructed. The plaintiff filed suit alleging the defendant, by removing the ponds, caused increased runoff across her property causing her damage.

In addressing whether liability existed, the court concluded that the upper landowner could not be required to maintain the artificially created ponds on his property for the benefit of the lower landowner since an upper landowner may interfere with the flow of surface water in order to improve his property. King 349 So.2d at 615. However, since the upper landowner has a duty not to unduly burden the property of the lower landowner nor to cause unnecessary damage when improving his property, the court found that although no duty exists to protect the lower

landowner from the flow of surface water, an upper landowner could be responsible for any damages sustained by the lower landowner due to a change in the status quo. King, 349 So.2d at 615.

CONCLUSION

So where does Alabama law stand on property owners rights when surface water is channeled or redirected onto the property of a lower landowner? Regardless of the rule applied, in general an upper landowner may alter the flow of surface water to improve his property provided he does not unduly burden and damage the property of the lower property owner by increasing the volume and velocity of the surface water disbursed. The lower landowner has, in general, the right not to be injured by an upper landowner channeling or altering the natural drainage of surface water onto the property of the lower property owner by increasing the volume or velocity of water received. These rights of upper and lower landowners exist regardless of whether the property is located in a rural area or in an incorporated city or town. If these rights of a lower landowner are violated, damages may be sought under actions such as trespass and nuisance and injunctive relief may be available as well.

Notwithstanding the general rule set forth herein, the Alabama Supreme Court has held that when the modified Civil Rule is applicable, then in "exceptional circumstances", an upper landowner may change the natural flow of surface water onto the lower landowner property even if this channeling of water increases the volume and the velocity of water disbursed onto the lower landowner. However, this will be allowed only in limited situations and only after a jury uses the criteria set forth in Vinson, supra, to determine whether an exceptional situation exists, whether such actions were justified and whether any lesser alternative could have been pursued. All of these situations, and resulting outcome, will depend greatly on the facts of a particular matter.