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A Summary of the Utah Recreational Use Statute: Limitation of Utah Private Landowners' Liability When Providing Public Recreation on Privately Owned Land

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Introduction

A fundamental right held by American property owners is to exclude others from using their land while retaining a sense of autonomy that allows them exclusive use and benefits from their land (Riley, 2001). Related to the use of land resources, as population increases, there is a corresponding increase in demand by the public for access to lands for outdoor recreation. If public land management agencies with limited resources are unable to meet this demand, private landowners may be in a position to assist the public in satisfying their desire for outdoor recreation opportunities.

A number of factors have been identified that landowners may consider when granting access to their land. These factors fall within five general areas: 1) landowner perceptions of users; 2) landowner objectives for the land; 3) economic incentives; 4) landowner adversity to certain uses; and 5) liability and risk concerns (Wright et al., 1988).

In the case of liability and risk concerns, landowners may fear being sued or held liable in a court of law for injuries sustained by people recreating on their land. As stated by Wright et al. (2002), "If public assess programs are to be successful, landowners need to understand and manage the legal risks associated with outdoor recreation enterprises."

All states have enacted legislation intended to help shield private landowners from liability when they grant free recreation access to their land. These laws are referred to as recreation-use-statutes and are drafted along the lines of the Council of State Governments Model Act (1965) (Wright et al., 2002). The Model Act is based on the idea that "landowners protected from liability will allow recreational use of their land, thus reducing state expenditures to provide such areas" (Wright et al., 2002). Utah's Recreational Use Statute was enacted in 1971 (Utah Code § 57-14).

Landowner Liability

Under tort and property rules, which define private landowners' legal relationship and responsibilities toward those who recreate on their lands, recreationists fall within three categories. Those categories are 1) invitees, 2) licensees, and 3) trespassers, each with varying degrees of legal protection (Wright et al., 2002).

The first category of a land user is an invitee. An invitee is a person who is expressly or implicitly invited onto private land for financial gains of the landowner (Restatement of Law of Torts, 2nd, §332, 1965; Riley, 2001; Wright et al., 2002). If a landowner charges people to hunt, fish, cut firewood, or recreate in some manner, he/she owes the highest level of legal protection to the invitee. His/her duties go beyond warning of dangers as he/she must actively inspect the property to find dangerous conditions and repair found dangers if feasible (Kaiser, 1986; Riley, 2001; Wright et al., 2002). The landowner may see this as an onus or burden, but he/she is not required to guarantee the safety of the invitee, only to use reasonable effort to prevent risk of injury (Wright et al., 2002).

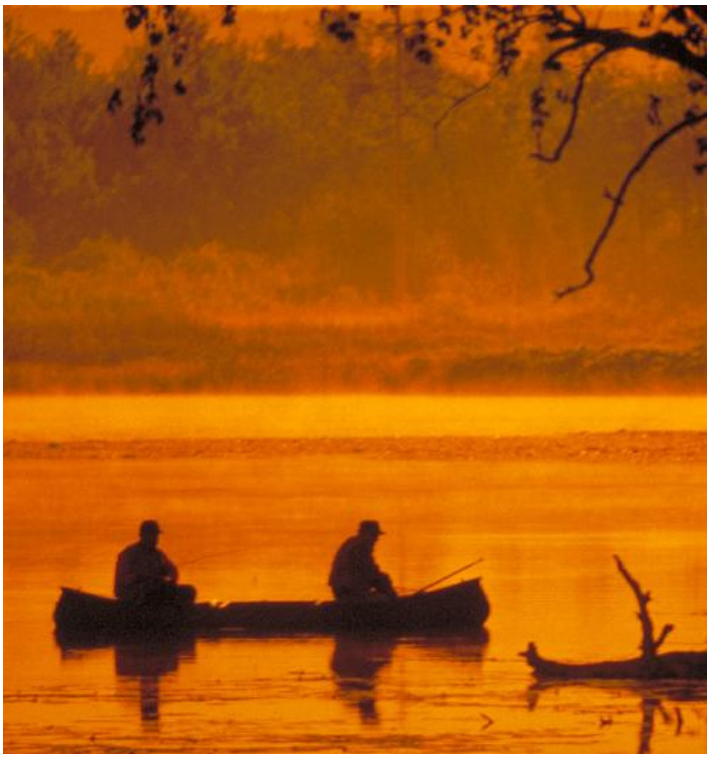
The second category is licensee. A licensee is someone who enters a property by permission without financial benefit to the landowner. A licensee is a "social" guest, such as a person who is permitted to cut Christmas trees but does not pay the landowner a fee (Restatement of the Law of Torts, 2nd, §330, 1965; Riley, 2001; Wright et al., 2002). The landowner duty of care is the same as the invitee except he/she does not have the duty to inspect the property for dangerous conditions. Once a landowner discovers a dangerous condition, he/she is obligated to report it to the licensee but has no duty to warn the licensee of obvious dangerous conditions (Wright et al., 2002). It should be noted in some states, failure to post no hunting or no trespassing signs along private property boundaries is implied permission to enter the property and the entrant is considered a licensee (Riley, 2001).

The third category of land users is a trespasser. As defined by the *Webster's New Universal Unabridged Dictionary* (1996), trespass is "a wrongful entry upon the lands of another." Legally, "a trespasser is a person who is on the property of another without any legal right, lawful authority, expressed or implied invitation or permission" (Restatement of the Law of Torts, 2nd, §329, 1965). A landowner's duty of care toward trespassers is considered very low. However, in many jurisdictions the landowner needs to refrain from conduct that would harm the trespasser (Riley, 2001). This can be more complicated if the trespasser is discovered or tolerated. For example, if a landowner is aware that hunters repeatedly trespass to access a duck blind, the landowner may be required to use reasonable care with the trespassers by posting warnings about known dangerous conditions. A landowner may have a special duty toward child trespassers. Under an attractive nuisance doctrine, a landowner may be held liable for injuries to a child but not liable for the same injuries to an adult. "An attractive nuisance is anything that may capture the interest of a child and attract the child to trespass onto land in order to investigate the object that is attracting them" (Riley, 2001). Examples could include abandoned outbuildings, farm equipment, lakes and ponds, and farm animals.

Legal Actions Against Landowners

Two types of tort-based claims can be made against a landowner when a land entrant is injured on the land. First is an action of "strict liability (liability without fault) based on the notion that some activities are so inherently or abnormally dangerous that liability should be imposed without a finding of fault regardless of whether the defendant (landowner) exercised reasonable care" (Riley, 2001). Examples might include injuries caused by dangerous animals, or dangerous activities such as application of poisons to crops or dynamiting beaver dams.

The second tort claim is that the landowner acted negligently. As defined by Riley (2001), "Negligence is the failure to exercise ordinary care such as a reasonably prudent and careful person under similar circumstances would exercise." The degree of care depends, in part, on the classification of the land users (see above).



Utah's Recreational Use Statute

As previously mentioned, the Utah Recreational Use Statute (Utah Code § 57-14) was signed into law in 1971. Its stated purpose "is to encourage public and private owners of land to make land and water areas available to the public for recreational purposes by limiting the owner's liability toward persons entering the land and water areas for those purposes" (Utah Code § 57-14-1). The following elements of the act may be of interest to Utah private landowners interested in opening up their land for public recreation use.

Subsection 57-14-3 of the act states the landowner does not have to keep his/her premises safe for entry or recreational use, or give warning of dangerous conditions or activities, and identifies exceptions to that provision. One exception is especially pertinent to landowners seeking to generate income from recreation use on their land. That exception excludes landowners who charge a person to enter or use the land for recreational purposes (except landowners who charge one dollar or less annually). However, a person who hunts on a Cooperative Wildlife Management Unit (CWMU) is not considered to have paid a fee.

If a private landowner chooses to lease land to groups or individuals for recreational use (such as hunting), those lease payments made by private parties to landowners are considered to be fees. This means liability protections provided under the act are lost. But government lease payments are not considered fees and liability protections are retained by the landowner. A way for landowners in private lease arrangements to avoid liability is to transfer the liability risk to the lessee or user by terms in the lease (Wright et al., 2002). The risk-transfer language should include provisions that users purchase their own liability insurance with minimum policy coverage and provide the landowner with proof of such insurance.

Another exception to Subsection 57-14-3 is malicious failure to warn against dangerous conditions. An example would be a landowner finding an abandoned mine shaft on his property and failing to warn users or close the shaft. A third exception is a land owner causing deliberate, willful, or malicious injury to a person or their property.

The final subsection of the act (57-14-7) refers to the person recreating on private land:

> This chapter (14) may not be construed to relieve any person, using the land of another for recreational purposes, from any obligation which the person may have in the absence of this act to exercise care in use of the land and in activities thereon, or from the legal consequences of failure to employ care.

Conclusion

In 1995 and 1996, the National Private Landowners Survey (NPLOS) was conducted to collect data regarding the amount of private lands open to public recreation in the United States. The researchers collected information from a sample of owners of rural, private tracts of 10 acres or more. The percent of landowners who allowed public access to people with whom they had no personal connections was 12% nationally, compared to 14% in the Rocky Mountain and Plains states (Teasley et al., 1997). Wright et al. (2002) reported the percentages reported in the 1995-1996 NPLOS study were about half than those in a NPLOS study conducted about ten years earlier. This would suggest in this time period a declining trend in the number of private landowners allowing non-fee public recreation access to their lands.

With increased awareness of public laws, such as recreational-use-statutes, private landowners who are considering opening up some of their lands for public recreation use will recognize they are not placing themselves in the "crosshairs" of liability lawyers. In fact, such statutes are in place for the explicit purpose of protecting private landowners' interests if they choose to provide the public with access and opportunities for outdoor recreation on their lands.

Glossary of Terms

Recreation-Use-Statutes: State enacted legislation intended to help shield private landowners from liability when they grant free recreation access to their land.

Tort: In law, a wrongful act, injury, or damage (not involving a breach of contract), for which a civil action can be brought.

Liability: Legal responsibility of the landowner for the well-being of his/her land users.

Negligence: Failure to exercise ordinary care that a reasonably prudent and careful person under similar circumstances would exercise.

Strict Liability (liability without fault): Based on the notion that some activities are so inherently or abnormally dangerous that liability should be imposed without a finding of fault regardless of whether the defendant (landowner) exercised reasonable care.

Invitee: A person who is expressly or implicitly invited onto private land for financial gains of the landowner.

Licensee: Someone who enters a property by permission without financial benefit to the landowner; a "social" guest of the landowner.

Trespasser: A person who is on the property of another without any legal right, lawful authority, expressed or implied invitation or permission.

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