

## Iowa's Recreational Use Immunity - Now You See It, Now You Don't

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### Overview

An Iowa statutory provision, known as the recreational use statute, provides an incentive for landowners to open up their property to entrants for recreational purposes by removing the common-law duties that landowners owe to lawful property entrants. Recreational users are generally treated as adult trespassers – the landowner only owes recreational entrants a duty to refrain from willfully or wantonly injuring them. However, a recent opinion of the Iowa Court of Appeals, which has been affirmed and expanded by the Iowa Supreme Court, has invalidated the Iowa recreational use statute in its present form.<sup>1</sup> The decision has important implications for landowners that open up their property to others for recreational uses.

### Background on Recreational Use Statutes

Recognizing the potential liability of owners and occupiers of real estate for injuries that occur to others using their land under the common law rules, the Council of State Governments in 1965 proposed the adoption of a Model Act to limit an owner or occupier's liability for injury occurring on the owner's property. The Council noted that if private owners were willing to make their land available to the general public without charge, every reasonable encouragement should be given to them. The stated purpose of the Model Act was to encourage owners to make land and water areas available to the public for recreational purposes by limiting their liability toward persons who enter the property for such

purposes.<sup>2</sup> Liability protection was extended to holders of a fee ownership interest, tenants, lessees, occupants, and persons in control of the premises. Land which receives the benefit of the act include roads, waters, water courses, private ways and buildings, structures and machinery or equipment when attached to the realty. Recreational activities within the purview of the act include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, and viewing or enjoying historical, archeological, scenic or scientific sites. Most states have enacted some version of the 1965 Model legislation.

An owner or occupier owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of dangerous conditions, uses, structures,<sup>3</sup> or activities to persons entering the premises for such recreational purposes. Similarly, if an owner, directly or indirectly, invites or permits any person without charge to use the property for recreational purposes, the owner does not extend any assurance the premises are safe for any purpose, confer the status of licensee or invitee on the person using the property, or assume responsibility or incur liability for any injury to persons or property caused by any act or omission of persons who are on the property.

The protection afforded by the Model Act is not absolute, however. Should injury to users of the property be caused by the willful or malicious failure to guard or warn against a dangerous

condition, use, structure, or activity, the protection of the Act would be lost.<sup>4</sup> Likewise, if the owner imposes a charge on the user of the property, the protection of the Act is lost. The 1965 Model Act contained a specific provision that did not exempt anyone from liability for injury in any case where the owner of land charges a fee to the person or persons who enter or go onto the land for recreational purposes. Under most state statutes patterned after the Model Act, if a fee is charged for use of the premises for recreational purposes, it converts the entrant's status to that of an invitee. Some states (such as Wisconsin) establish a monetary limit on what a landowner may receive in a calendar year and still have the liability protection of the statute. Many fee-based recreational use operations require guests to sign a form releasing the landowner from liability for any injury a guest may sustain while recreating on the premises. To be an effective shield against liability, a release must be drafted carefully and must be clear, unambiguous, explicit and not violate public policy.<sup>5</sup> Courts generally construe release language against the drafter and severely limit the landowner's ability to contract away liability for its own negligence.<sup>6</sup> Likewise, most courts that have considered the question have held that a parent cannot release a minor child's prospective claim for negligence.<sup>7</sup> This has led some state legislatures to consider legislation designed to protect organizations while not allowing wrongdoers to escape liability for intentional or grossly negligent conduct.<sup>8</sup>

Problems may also arise for persons who do not actually charge a fee, but have an expectation that there will be compensation. In general, the policy underlying the consideration exception in recreational use statutes is to retain tort liability where use is granted in return for an economic benefit, or an expected economic benefit. Since the potential for profit is thought sufficient to encourage owners who want to make commercial use of their land to open them to the public, the further stimulus of tort immunity is deemed to be unnecessary and improper. With increased interest by farm and ranch owners in providing recreational activities to generate additional income, some states have passed ag

immunity laws designed to supplement the protection provided by recreational liability acts. In general, the various state statutes provide liability protection for landowners against the injury or death of a participant in a recreational activity arising from the "inherent risks" of the activity.<sup>9</sup>

### **The Iowa Provision**

Under the Iowa recreational use statute, a landowner is encouraged to open his property to others for recreational uses by receiving immunity from liability except for injuries resulting from the landowner's willful or malicious acts.<sup>10</sup> Indeed, the Iowa legislature set forth the purpose of the statute by stating, "The purpose of this chapter is to encourage private owners of land to make land and water areas available to the public for recreational purposes...by limiting an owner's liability toward persons entering onto the owner's property for such purposes."<sup>11</sup>

If a landowner directly or indirectly invites others to use the land for recreational purposes without charge, the law explicitly recognizes that the invitation does not transform the legal status of the users into either invitees or licensees, both of whom require a higher degree of care to ensure the property is safe for use.<sup>12</sup> The statute also expressly states that the landowner does not "assume responsibility for or incur liability for any injury" caused by any act or omission.<sup>13</sup> Protection under the statute is lost if the owner charges a fee, or willfully or maliciously fails to guard or warn against a dangerous condition, use, structure or activity.<sup>14</sup>

### ***Sallee v. Stewart***<sup>15</sup>

In 2012, an Iowa Court of Appeals opinion ignored the overall purpose of the Iowa recreational use statute and created an additional exception to the immunity granted to landowners who invite people to enter their land for recreational purposes *and who are present as "tour guides" during the recreational use.*<sup>16</sup> In other words, according to the Court of Appeals, landowners have immunity from liability if they open their land for recreational use, *so long as*

*they are **not** present with the users while the users are on the property.* If a landowner accompanies the users on the property or personally creates opportunities for recreational activities, then the immunity is removed. In that situation, the standard of care and a duty to keep the land safe for the user is reinstated. However, that outcome appears to be in direct conflict with the statute, which also clearly states: “Nothing in this chapter shall be construed to... [c]reate a duty of care or ground of liability for injury to persons or property.”<sup>17</sup>

**Facts of *Sallee*.** The facts of the case are straightforward. The plaintiff was a chaperone for her daughter’s kindergarten class field trip to the defendants’ dairy farm. The kindergarten teacher had been invited to bring her class to the farm on an annual basis for 25 years. During this visit, the group was guided by the defendants to different activities, such as horseback riding, calf feeding, tractor viewing, and playing in the hayloft. The plaintiff was in the hayloft with the children when the hay bale on which she was standing gave way and she fell down a chute to the floor six feet below. As a result, she broke her wrist and ankle.

The plaintiff sued the defendants alleging that they breached their duty to maintain the premises in a safe manner. She later amended her petition to allege that “as tour guides” upon whom the plaintiff “relied,” the defendants “failed to exercise reasonable care in the conduct of the tour when they directed the [p]laintiff and her daughter into the hay loft where the dangerous condition existed.”

**Trial court decision.** The defendants asserted immunity under Iowa’s recreational use statute.<sup>18</sup> The defendant filed a motion for summary judgment asserting the statute’s grant of limited liability to landowners applied to the plaintiff’s claims. The trial court granted the defendant’s summary judgment motion, noting the purpose of the statute is to “encourage private owners of land to make land and water areas available to the public for recreational purposes” by limiting the owner’s liability for such entry onto their land. The trial court also found the defendant did not affirmatively leave

the protection of the recreational use statute by acting as tour guides. The plaintiff appealed.

**Court of Appeals.** On appeal, the plaintiff argued that the recreational use statute applied only to outside and unimproved areas and was not intended to apply to land that is not open to the general public. The court disagreed, and held that the recreational use statute applied to the plaintiff’s premises liability claims and barred them. The court noted that the definition of “land” in the statute is very broad and specifically included buildings, structures, and machinery and equipment on the land. The statute does not require the land to be held open to the public. The court also found the activities during the field trip, including horseback riding, calf feeding, tractor viewing, and playing in the hayloft were recreational in nature and similar to activities listed in the expansive statutory definition of recreational activities. Finally, the court rejected the plaintiff’s argument that there was any evidence of a willful or malicious failure to guard against a dangerous condition.

However, in a re-characterization of her premises liability claim, the plaintiff argued that her common law negligence claim was for the defendants’ roles as “tour guides”. The plaintiff argued the defendants assumed a duty as tour guides for the class “by virtue of the risks that were imposed” upon the participants by the activities arranged. This, according to the plaintiff, required the defendant to exercise reasonable care to fix dangers, not take the class into dangerous areas, or to warn of existing dangers.

Other jurisdictions have allowed claims of negligence unrelated to premises liability to proceed in cases involving recreational uses. For example, in *Dickinson v. Clark*,<sup>19</sup> the court allowed a claim for negligent supervision to proceed against a landowner who allowed his granddaughter to load a log-splitter without instruction or supervision despite warnings on the machine that minors should not operate the machine. As a result, the granddaughter severed her hand the first time she used it.

But, *Dickinson* did not address the issue presented by the present case. This case did not involve any allegations of negligent supervision as allowed in *Dickinson*. The allegations against the defendants are based purely on a failure to warn of dangerous conditions on the premises and are merely a recasting of the exact claims from which the landowners are immune under the statute. This is not a claim distinct from the original allegation founded in premises liability.

Ultimately, the court determined that previous Iowa cases interpreting the recreational use statute did not address the specific question of whether the landowner owed a duty to warn if the landowner guided the public on the premises in the vicinity of a dangerous condition. However, the court relied on a 1992 Iowa Supreme Court decision<sup>20</sup> to find that when a claim is made outside the scope of premises liability, the recreational use statute does *not* provide immunity to the landowners.<sup>21</sup>

The court reasoned that “[i]t is one thing to allow the public to use land for recreational purposes. It is another to organize specific activities and to guide visitors through the land.” The court held that once the defendant undertook responsibility to guide the field trip attendees, the recreational use statute did not cover the relationship between landowner and the invited public. In other words, the court held that once a landowner invites users onto the property for recreational purposes *and remains with them while they are present*, the statute’s designation that the users shall not become a licensee or invitee is eliminated.

Because the case was decided on summary judgment and there were insufficient facts to determine if the defendants were negligent, the court remanded the case to the district court for resolution of whether the defendants’ conduct had changed the status of the entrants from recreational uses (owed no higher duty than that owed to an adult trespasser) to invited guests.

In essence, the court created a new exception from liability protection for landowners under the recreational use statute. To have the liability protection of the statute, a landowner must not

charge entrants, but now must also not *interact with the entrants while they are on the premises for recreational purposes*. Apparently, according to the Court of Appeals, merely inviting persons to the premises for recreational purposes still does not elevate their status beyond that of a trespasser for liability purposes.

**Note:** According to the court’s reasoning, it is apparently better policy to encourage property owners to invite entrants to the owner’s premises and require the property owner to leave the entrants to their own devices while on the land, rather than risk liability by helping put together recreational activities and seeing that those activities can be appropriately enjoyed by the entrants. From that perspective, the court’s opinion seems to largely eliminate the purpose of Iowa’s recreational use statute.

The defendant sought further review by the Iowa Supreme Court, and the Supreme Court granted review. On February 15, the Iowa Supreme Court delivered a 75-page split (5-2) opinion.

### **Iowa Supreme Court’s Majority Opinion<sup>22</sup>**

The Court’s majority opinion presented a detailed review of the history of the recreational use statutes that were widely adopted by legislatures throughout the United States. The Court focused on the difference in language adopted by the Iowa legislature versus the model language proposed by the Council of State Governments. The critical difference, according to the majority, was that Iowa’s list of recreational activities did not include a catch-all phrase, “includes, but is not limited to” prior to presenting a listing of specific recreational activities. Combined with the fact that the Iowa legislature, since 1971, has amended the statute on several occasions to provide additional activities covered by the Act, the court held that the legislative intent was that the activities to be considered as covered under the statute should be narrowly interpreted. The Court invited the legislature to take action if additional activities were meant to be included.

**Five liability-limiting factors.** The Court reviewed five fact-specific tests that have been used by *other* states to limit the scope of liability protections in those states' recreational use statutes. The majority opinion appeared to adopt *all* of the tests. Each test must be satisfied and each one represents a new requirement that must be satisfied before the liability protections of the Iowa recreational use statute apply. None of these requirements have ever been previously required under the Iowa statute.

**\*Land open to general public.** The first requirement is that the land must be held open to the general public. The Court reasoned that the purpose of the statute was to establish quasi-parks on private lands where the public would have access. The Court stated, "To extend the statute's protections to property not open to the public not only fails to promote the purposes of the statute, but tends to defeat them."

**\*Activities must occur "outdoors."** The second test requires that the recreational activities be associated with the "true outdoors." This test essentially requires that the recreational use be of the sort that occurs on large, open tracts of vacant land in a natural state. Thus, a landowner does not have the protection of the statute for an injury sustained in a barn involving a recreational activity. In this case, the Court determined that frolicking in a hayloft was not a covered recreational activity. In any event, it is unclear how this test could ever be satisfied for activities in a barn or similar structure on agricultural land if the recreational activity must be associated with the "true outdoors".

**\*Injury must be sustained while directly participating in a covered activity.** The third test requires a determination that the injury be sustained by an individual while that individual is participating directly in a listed recreational activity. Thus, for example, if a chaperone is injured while accompanying others that are engaging in recreational activities, then the statute's protections do not apply. The act of chaperoning does not involve the directly participation in a recreational activity.

**Note:** This causal activity test will almost automatically eliminate any opportunity for a landowner to ever receive a summary judgment ruling and will require all contested claims of liability to be presented to a jury for determination. Any licensed lawyer in Iowa can be creative enough to categorize any activity and injury on private property in a manner to generate a fact question regarding whether the injury is or is not causally linked to a recreational activity. This test alone eliminates any usefulness of what remains of the statute for liability protection for a landowner. In order to invoke the protection, the landowner will be required to bear the burden and expense of litigating the issue to a jury.

**\*No invitations.** The fourth test bars the immunity protections of the statute if the individual is invited onto the property.

**\*No "tour guide."** The fifth test precludes recovery if the landowner functions in the role of a tour guide for the recreational activity. Thus, according to the majority opinion, if a landowner wants the immunity protections of the statute to apply, the landowner must make his property available to the public "akin to a privately owned but public park"; must only allow individuals to engage in truly outdoor activities; must ensure that no individual does anything on the land that is not directly related to the recreational activity (including chaperoning children or accompanying those engaging in a recreational activity); must not specifically invite any person onto the property, and; must not act as a "tour guide."

**Application of Facts to the New Factual Inquiries.** In reviewing the activities of the kindergarten class, the Court cautioned that merely because some of the activities undertaken by the kindergarten class were recreational in nature did not mean that the defendant would be granted liability protection under the statute. The Court agreed that horseback riding was a recreational activity, but that such activity was irrelevant, because the inquiry is focused only on the immediate activity undertaken by the injured plaintiff at the time of

the injury. The chaperone was in the hayloft chaperoning the kindergarteners when the injury occurred. According to the Court, the plaintiff's activities in the hayloft must be capable of being defined as "recreational" within the limited scope of the specific words within Iowa's statute.

The Court determined that frolicking in the hayloft of a barn was not a recreational activity. It also was not part of a nature study because it did not involve outdoor activities of observation. Likewise, the Court determined that "frolicking" was not a "sport" under the statute because it was not of the organized and structured types of sports specifically listed in the statute. The Court declined to interpret "sport" as being a "physical activity engaged in for pleasure," but rather as an event that followed rules and structure. Because the plaintiff was injured in a hayloft where children were frolicking in hay (in an unstructured and non-sports-like manner) located in a barn at the time of her injury, the activity in which she was only indirectly participating could not be defined as a recreational activity. Thus, the statute's protections did not apply.

**Note:** Because the overall activity was not recreational, the court did not address the question of whether the plaintiff's role as chaperone would have impacted the applicability of the statute. But, in identifying a causal test requirement, the Court alluded that the chaperone's injuries would not be covered.

### Concurring Opinion

A concurring opinion was also filed regarding the Court of Appeals' holding that the defendant's role as "tour guide" for the kindergarten class subjected him to liability for his negligence in failing to properly supervise the group. The concurring opinion held that this negligent supervision is outside the scope of the recreational use statute's immunity and created an independent basis for recovery against the defendant.

The Court held that because the defendant set up the tour activities and accompanied the group while they were on the farm, the defendant created an affirmative duty to ensure the protection of everyone on the tour. Because of this affirmative action, the defendant was negligent for failing to warn of the danger in the hayloft separate and apart from any duty that might have been abrogated under the recreational use immunity.

**Note:** The result of this concurring opinion is that if any liability immunity remained after the Court's majority opinion, allowing additional negligence claims premised on a duty and failure to warn of a defect in the property (which incidentally sounds a lot like the underlying duty in premises liability) when the landowner takes any affirmative steps to be present at the time the public is on the property, completely eviscerates any immunity for the landowner.

### Dissenting Opinion

A dissenting opinion was also filed. The dissent pointed out that the original recreational use statute in Iowa was intended to provide liability protection for agricultural landowners so that they would have a greater incentive to allow others onto their property to engage in recreational activities. Previous Iowa cases interpreting the statute viewed the protection "as a blanket abrogation of duty to all recreational users." The dissent pointed out that the fact that the plaintiff's injury occurred inside a barn was not relevant on the issue of the statute's application. Nowhere within the statute does it require that the recreational use be an "outdoor use." Instead, the statute provides protection to agricultural land "and buildings, structures, ..." Because the barn was an integral part of the defendant's dairy farm operation, the barn qualified as covered property under the statute.

The dissent also emphasized that previous Iowa cases construing the recreational use statute had not required coverage to be conditioned on the land being open to the general public. The dissent emphasized that the statute's language requires only that "others" be allowed on the

land and the statute does not require the landowner to make an open invitation to the general public to garner immunity.

The dissent also disagreed with the hyper-technical definition of “sports” that the majority opinion adopted, noting that such a definition is contrary to the purpose of a recreational use statute. Instead, the dissent reasoned, the Court should have viewed the activity as whether it is a form of physical activity for play or diversion rather than as solely an organized, structured game. The dissent also pointed out that the fact that the plaintiff was a chaperone of children engaging in recreational activities should also be irrelevant. The statute broadly includes “persons entering for such [recreational] purposes.” The plaintiff’s role in chaperoning the children was in furtherance of the children’s recreational purpose. The dissent noted that, as a practical matter, it would be strange to allow coverage under the statute only if the farmer in this case had allowed six-year-olds to run unaccompanied and unsupervised throughout his farm.

The dissent also pointed out that the duty under the “negligent supervision” or “tour guide” exception advanced by the concurring opinion was premised on the same breach of duty- to keep the premises safe for entry or failure to warn of a dangerous condition. Because the plaintiff’s claim had nothing to do with any negligence aside from this duty, the negligence claim was merely a recasting of the premises liability claim that should have been recognized as immune under the recreational use statute. The dissent capped-off its criticism of the majority opinion by stating, “Notwithstanding its extensive citations to historical materials, law review articles, and other states’ law, I think the majority opinion misses the essential point: Our recreational use law protects farmers who want to open up their farm properties so others can play there for free. At least it did so until today.”

### **Bleak Future for Recreational Use**

Based on the Supreme Court’s opinion, agricultural landowners that allow individuals to come onto the property now have an affirmative

duty to keep the land free of any dangers or defects. That is precisely the same standard that applies to invitees. The protections of the recreational use statute no longer apply. Without legislative involvement, it will be a rare set of circumstances in which any landowner will ever again have any liability protection under Iowa’s recreational use statute as it now stands.

### **Related Issue – Liability Release Forms.**

In *Galloway v. State*,<sup>23</sup> the Iowa Supreme Court determined that waivers of liability signed by a parent for a child’s activities are unenforceable. Landowners now have little, if any, protection against liability either through immunity for the activities or through a signed waiver in consideration for participation in the activities.<sup>24</sup>

### **2013 Legislative Session**

On May 16, 2013 the Iowa legislature unanimously passed HF 649 to address the liability concerns raised by the *Sallee v. Stewart* case and, in effect, abrogate the Court’s decision. The bill expresses that the statute should be interpreted liberally and broadly in favor of landholders to accomplish the purposes of the statute.

The bill makes clear that the landholder does not have to open the land to the general public. It also adds “educational activities” to the scope of recreational use activities. The bill also expressly states that persons accompanying others engaging in the recreational activities are included under the statute (i.e. chaperones). The bill eliminates the causation requirement enunciated in the *Sallee* case that injuries must be directly sustained in the course of a specific recreational activity and includes protection for a person’s entire presence on the land to participate in the activities. The also bill eliminates any duty of care created solely by reason of guiding, directing, supervising, or participating in the activities (“tour guide” liability).

The bill retains exceptions for statutory liability protection if injuries are sustained from the land holder’s willful or malicious failure to guard or

warn against a dangerous condition or if the land holder charges a fee for the use of the land.

## Conclusion

Before the legislature's elimination of the Court's opinion, landowners would have had to take additional steps to protect themselves by preventing entry by any persons upon their property, within their structures, or upon their farms. The Court had eliminated the promised liability protection for opening agricultural land to others for recreational purposes. The risks of continuing the practice were heightened with limited opportunities to guard against liability.

Without the legislature's action, you could be guaranteed that the kindergarten class that had visited defendant's farm for 25 years will have the opportunity to learn about dairy production only by reading the back of their milk cartons and looking at picture books in the safety and comfort of their school building. Hands-on, practical education would not occur.

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<sup>1</sup> *Sallee v. Stewart*, 827 N.W.2d 128 (Iowa 2013), *aff'd*, 814 N.W.2d 622 (Iowa Ct. App. 2012).

<sup>2</sup> *See, e.g., Brown v. Wilson*, 252 Neb. 782, 567 N.W.2d 124 (1997) (nine year old invitee kicked by horse not member of public to which Nebraska version of Model Act applied; Act's purpose to encourage open use of rural lands for general public and did not apply to the residential and family situation involved); *Dykes v. Scotts Bluff Ag Society*, 260 Neb. 375, 617 N.W.2d 817 (2000) (Nebraska statute inapplicable to livestock viewing activity at county fair; statute required active participation); *State ex rel., Young v. Wood*, 254 S.W.3d 871 (Mo. 2008) (state recreational use statute held applicable to immunize landowner for death of non-paying hunter on property who was shot by another non-paying hunter).

<sup>3</sup> The Wisconsin statute has been held applicable to a tree stand located on real property irrespective of whether the owner of the structure also owned the

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underlying real estate. *Peterson v. Midwest Security Insurance Co.*, 636 N.W.2d 727 (Wis. 2001), *aff'd*, 617 N.W.2d 876 (Wis. Ct. App. 2000); *See also Estate of Hilston v. State*, 160 P.3d 507 (Mont. 2007) (state recreational use act precludes negligence claims against a landowner arising from the "condition of the property"; grizzly bears held to be a condition of the property for which the state owed no duty of care to the decedent's estate when decedent attacked and killed by grizzly bear); *City of Waco v. Kirwan*, No. 08-0121, 2009 Tex. LEXIS 969 (Tex. Sup. Ct. Nov. 20, 2009) (recreational use Statute does not impose duty upon landowner to warn or protect recreational users against the danger of a naturally occurring condition or otherwise refrain from gross negligence with respect to the condition).

<sup>4</sup> *See, e.g., Rzechkowski v. Kowalczyk*, 654 N.Y.S.2d 816 (1997) (jury question presented as to whether maliciously or willfully failed to guard against dangerous condition by not erecting fence around top-face of gravel pit on premises).

<sup>5</sup> *See, e.g., Pearce v. Utah Athletic Foundation*, 179 P.3d 760 (Utah 2008) (release of liability form barred ordinary negligence claim: form signed by plaintiff not contrary to public policy and not ambiguous); *Myers v. Lutsen Mountains Corp.*, No. 09-1184, 2009 U.S. App. LEXIS 25825 (8th Cir. Nov. 25, 2009) (plaintiff signed release before skiing at defendant's resort which, by its terms, barred plaintiff's right to sue for injuries; plaintiff injured upon skiing over edge of intermediate-level course: under state (MN) law, release is valid due to lack of disparity in bargaining power between the parties and release did not violate public policy); *Chepkovich V. Hidden Valley Resort. L.P.*, No. 22 WAP 2007, 2010 Pa. LEXIS 1311 (Pa. Sup. Ct. Jun. 21, 2010) (plaintiff sued defendant for injuries sustained in fall from ski lift and for spouse's loss of consortium; suit barred by release form that plaintiff signed and by plaintiff's voluntary assumption of risk under state law; plaintiff's injuries arose from the inherent risk of falling from ski lift); *Robinette v. Aspen Skiing Company, L.L.C.* 363 Fed. Appx. 547 (10th Cir. 2010) (plaintiff's signing of liability release form resulted in plaintiff assuming all risks of skiing at defendant's facility; liability release form does not violate public policy (under Colorado law) and had clear terms); but see *Galloway v. State*, 790 N.W.2d 252 (Iowa 2010) (liability release forms that a parent signs on behalf of a child violate public policy and are unenforceable).

<sup>6</sup> *See, e.g., Steele v. Mt. Hood Meadows Oregon, Ltd.*, 159 Or. App. 272 (1999) (release provided no defense against plaintiff's negligence claim; release failed to specifically refer to negligence and was



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partially ambiguous); *Bothell v. Two Point Acres, Inc.*, 965 P.2d 47 (Ariz. 1998) (release strictly construed against drafter and failed to bar liability as a matter of law); but see, *Street v. Darwin Ranch, Inc.*, 75 F. Supp. 2d 1296 (D. Wyo. 1999) (release used in context of participation in trail ride upheld: release fairly entered into and evidenced parties' intent to release defendant from negligence in clear and unambiguous language).

<sup>7</sup> See, e.g., *Scott v. Pacific West Mountain Resort*, 834 P.2d 6 (Wash. 1992); *Cooper v. Aspen Skiing Co.*, 48 P.3d 1229 (Colo. 2002); *Johnson v. New River Scenic Whitewater Tours, Inc.*, 313 F. Supp. 2d 621 (S.D. W. Va. 2004).

<sup>8</sup> See, e.g., Colo. Rev. Stat. §13-22-107 (2005).

<sup>9</sup> See, e.g., Colo. Rev. Stat. §13-21-122 (2005).

<sup>10</sup> Iowa Code §461C.3 specifies that, "an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes."

<sup>11</sup> Iowa Code §461C.1.

<sup>12</sup> Iowa Code §461C.4

<sup>13</sup> *Id.*

<sup>14</sup> Iowa Code §461C.6.

<sup>15</sup> No. 1-967/11-0892, 2012 WL 652039 (Iowa Ct. App. Feb. 29, 2012).

<sup>16</sup> *Id.*

<sup>17</sup> Iowa Code § 461C.7(1) (2011).

<sup>18</sup> Iowa Code Chapter 461C.

<sup>19</sup> 767 A.2d 303 (Maine 2001).

<sup>20</sup> *Scott v. Wright*, 486 N.W.2d 40, 42 (Iowa 1992).

<sup>21</sup> In *Scott*, a claim against the landowner involved vicarious liability for the negligence of a tractor driver who caused an accident while participants engaged in a hayride. The court noted that the recreational use statute removes the traditional duties that landowners have to lawful entrants to keep the premises safe and to warn of dangerous conditions.

<sup>22</sup> *Sallee v. Stewart*, 827 N.W.2d 128 (Iowa 2013).

<sup>23</sup> 790 N.W.2d 252 (Iowa 2010).

<sup>24</sup> You can read our summary of the *Galloway* case at the following link:

<http://www.calt.iastate.edu/nanny.html>