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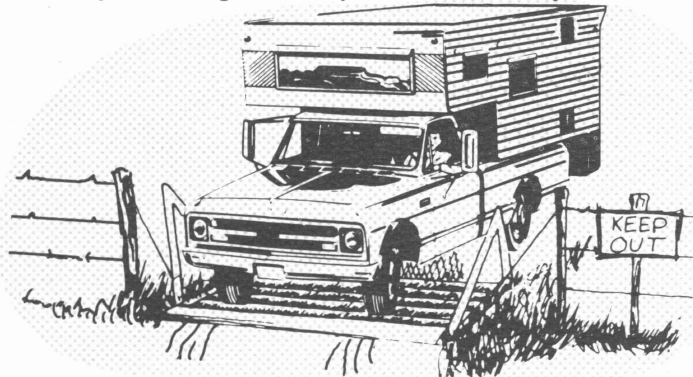
PUBLIC LIABILITY: QUESTIONS ARISING IN CERTAIN FARM AND RANCH RECREATION ENTERPRISES

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Rural Texas landowners are increasingly adding recreational enterprises to their farming and ranching operations, and increased interest is being shown in developing land for recreational pursuits, either alone or in conjunction with other land uses. Perhaps the most common uses of land for recreation are, and have been, hunting and fishing, but other enterprises such as camping, picnicking and dude ranching are rapidly increasing. But many property owners lack knowledge of the legal implications of such enterprises and uses of lands.

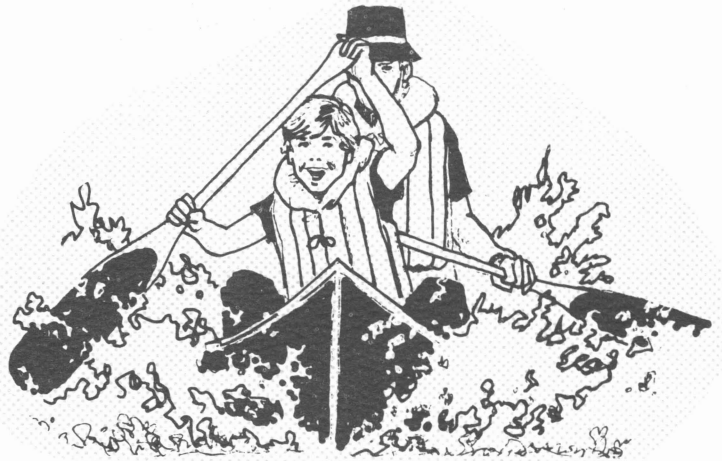
This publication is concerned with Texas law and is designed to acquaint landowners with some of the legal factors involved in using land for recreational enterprises. This study should be used for general informational and planning purposes only, and it is designed to foster a greater awareness of the necessity for considering the legal factors involved. It is *not* an in-depth statement or interpretation of laws. Should a specific situation arise in which a legal interpretation is needed, an attorney should be consulted for a professional opinion and evaluation.

When an individual enters upon the land of another, he enters into one of several different classifications of relationship with the landowner. The landowner, depending upon the classification and the relationship involved, is charged with certain duties toward that individual. Knowledge of these general classifications and type of duty imposed by each upon the landowner will help acquaint the landowner with potential problems that may arise. Rarely are these classifications clear cut, and a landowner should *not* attempt to classify the users of land in determining potential liability and degrees of particular activity and use.



This publication was adapted from Great Plains Agricultural Council Publication No. 46. **Limiting Liability When Private Property is Used for Outdoor Recreation—Volume 1: Legal Aspects.** Nebraska Agricultural Experiment Station, Bulletin 510. Lincoln: University of Nebraska, College of Agriculture, November 1970. Of additional interest is the second in this series, Great Plains Agricultural Council Publication No. 47. **Limiting Liability When Private Property is Used for Outdoor Recreation—Volume 2: Insurance Aspects.** Nebraska Agricultural Experiment Station, Bulletin 532. Lincoln: University of Nebraska, College of Agriculture, August 1974.

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TYPES OF RECREATIONAL VISITORS

The following discussion identifies the three major types of persons who enter private lands for recreational purposes.

Invitee

An invitee is a person who comes on the premises by virtue of an invitation either expressed or implied. The possessor has a duty to use ordinary care to protect the invitee, but he is not placed in the position of an insurer for all purposes.

The invitee assumes the risk of open and obvious dangers present on the land which could have been avoided by exercising ordinary care. The owner or occupant of the land owes a duty to keep the premises in reasonably safe condition and may be liable for injuries caused to an invitee by concealed conditions, the dangers of which are not readily apparent to the invitee. The owner or occupant must warn the invitee of such concealed conditions if he knows, or by reasonable inspection of the premises should know, of the condition. Examples of invitees are business visitors, including recreationists coming onto the land for a charge. When the landowner charges for an activity, it may be implied that he is representing the safeness of the premises from danger.

Licensee

The licensee is a person who comes on the premises with consent either expressed or implied. The possessor is liable for injuries caused by wanton or willful acts or by intentional harm or by gross negligence. The licensee assumes the risk of injury from normal activities or the normal condition of the premises when he enters the land. Examples of licensees are social guests or recreationists using the land with permission without charge. An occupier owes no duty of inspection or affirmative care to make the premises safe for a licensee; however, there is an obligation on the part of the occupier to exercise reasonable care for protection of the licensee.

Trespasser

A trespasser is a person who comes on the land or premises without permission. The landowner or possessor may use reasonable force to evict a trespasser. There is no liability for injuries to a trespasser because of dangerous conditions on the land in the absence of intentional harm caused by the landowner. The landowner cannot deliberately or willfully allow a condition to exist (such as a trap or other device) which is calculated to cause injury to those who might come upon the land. It should be noted that toleration by the landholder of a known trespasser can make that trespasser's use permissive.

TYPES OF LANDOWNER LIABILITIES

The following discussion examines the chief types of landowner liabilities with regard to recreational visitors.



Nuisances

Certain activities by the landowner can become nuisances to others. A public nuisance results when an activity interferes with a public right, such as when there is a danger to public morals or a disturbance of the peace. An activity can also result in a nuisance to an adjoining landowner if the activity is more than a trifling annoyance and results in substantial discomfort.

Attractive Nuisance

The "Attractive Nuisance Doctrine" imposes liability upon landowners for injuries to children under certain circumstances. This doctrine applies when a child, who because of age or inexperience, is unable to appreciate the dangers involved, is induced to come onto the land or into a dangerous situation by some condition or thing attractive to him, and suffers injury by reason of that condition or thing. This doctrine balances the right of the landowner to enjoy his property without interference with the interests of society in the protection of children from unusual and dangerous conditions. Instances in which landowners have been held liable for injuries to



children include drownings in ponds or pits and injuries caused by playing on machinery. Generally, for a landowner to be liable under this doctrine, there must be a condition which the possessor knows, or should know, is likely to attract young children; the condition must be one which the landowner knows, or should know, involves unreasonable risk of harm to children; and the child must be unable to appreciate fully the risks and dangers involved in the condition.

Misconduct of Others

Generally, a person is not under an absolute duty to protect a guest from injury by another guest. A landowner can be liable for injuries to a guest caused by another guest if the landowner knows, or reasonably should know, of the danger and should take reasonable precautions to prevent guests and patrons from suffering injury resulting from the misconduct of others upon the premises. A possessor of land may limit liability by warning or asking unruly guests to restrain themselves.

Dangerous Conditions

As noted before, the duty owed to different classes of people coming onto the premises is different; however, attempts by the landowner to classify those using the premises can be dangerous, and the landowner generally should disclose any concealed dangerous conditions and should exercise reasonable care to discover and remove sources of potential danger.



Responsibility for Domestic Animals

An owner can be liable for injuries inflicted by domestic animals if he has knowledge that the animal has vicious tendencies and he is negligent in losing control of the animal.

METHODS OF LIMITING LIABILITY

The following are several suggested methods by which landowners may limit the degree of their liability concerning recreational visitors.

Maintenance of Safe Premises

The most effective way of limiting liability usually is to inspect the premises frequently for safety. In such an inspection, both natural and manmade conditions should be scrutinized, as well as the landowner's practices in regard to any recreational enterprise. Any dangerous condition should either be repaired immediately or steps should be taken to change the condition by improvement if possible or removal if not. If nothing can be done to make the condition safe, a warning, such as a sign should be considered.

Warning about Dangerous Conditions

Often a mere warning about dangerous conditions can eliminate liability if the person warned is later heedless of this warning. A person can be held liable in spite of warnings if the warned person is incompetent or known to be irresponsible, or is otherwise incapable or unlikely to appreciate the warning. For example, a warning given to a child too young to comprehend and reasonably appreciate the extent of danger involved will not be effective to protect one against liability if he fails to supervise the child properly and harm later befalls the child because of the danger.

Liability Insurance

Insurance shifts the risk of large losses to a professional risk bearer. Before purchasing insurance the landowner should consult an attorney and a reliable insurance firm to determine what coverage, if any, is needed. While insurance shifts the risk, it does not eliminate the need for the

landowner to exercise the care he ordinarily would. Most insurance policies will have a deductible amount whereby small losses will not be covered, and the landowner will naturally wish to minimize these losses where possible. Additionally, premium rates and the willingness of an insurer to protect against losses will depend to a large extent on the practices and conditions existing on the lands and the specific activities to be insured.

Incorporation

Under certain circumstances, incorporation may be effective in limiting the amount of potential liability to the assets of the incorporation and in relieving the individual owners of personal liability. Since the liability benefits from incorporation will vary, an attorney should be contacted if incorporation is contemplated in order to determine its effectiveness in a particular situation.

Maintenance of Supervision

Maintaining supervision of the activities of persons coming on the premises can be effective in limiting liability to some extent. By keeping a watchful eye on visitors and their activities, the landowner can take adequate precautions to warn guests of dangers, or control those who are unruly, as well as moving to stop unwanted types of activities on the part of guests.

SUMMARY RECOMMENDATIONS

Before adding a recreational enterprise, a landowner should determine the nature and extent of the activities contemplated for the enterprise and give some consideration and planning to that enterprise. Legal assistance prior to actual entry into the enterprise can assist the landowner in determining which practices to employ and which to avoid in the operation and acquaint him with specific problems which might possibly result. This should allow him to anticipate and minimize the risks of developing a recreational enterprise.

This publication is designed to provide accurate and authoritative educational information in regard to the subject matter covered.

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