CHAPTER 3

Limitation on Liability of Landowners

**SECTION 27‑3‑10.** Declaration of purpose.

 The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

HISTORY: 1962 Code Section 51‑81; 1968 (55) 3047.

Library References

Negligence 1192.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 399, 538.

RESEARCH REFERENCES

ALR Library

193 ALR, Federal 1 , Liability of United States for Death or Injury Sustained by Visitor to Area Administered by United States Forest Service or Army Corps of Engineers Under Federal Tort Claims Act (28 U.S.C.A. Sections 1346(B), 2671 et seq.)...

Encyclopedias

S.C. Jur. Negligence Section 43, Duty as to Invitees.

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

Treatises and Practice Aids

18 Causes of Action 613, Cause of Action for Personal Injury or Death in Which Recreational Use Statute is Raised as Defense.

**SECTION 27‑3‑20.** Definitions.

 As used in this chapter:

 (a) “Aviation activities” means taking off, flying, or landing an airplane or aircraft. Aviation activities do not include airshows or any activity where the general public is invited.

 (b) “Land” means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

 (c) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant, easement holder, or person in control of the premises.

 (d) “Recreational purpose” includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, summer and winter sports, aviation activities, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

 (e) “Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

 (f) “Persons” means individuals regardless of age.

HISTORY: 1962 Code Section 51‑82; 1968 (55) 3047; 2014 Act No. 255 (H.4673), Section 1, eff June 6, 2014.

Effect of Amendment

2014 Act No. 255, Section 1, added subsection (a), defining “aviation activities”; redesignated the subsections accordingly; in subsection (c), inserted “easement holder,”; and in subsection (d), inserted “, aviation activities,”.

Library References

Negligence 1193.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 399, 538.

RESEARCH REFERENCES

Encyclopedias

133 Am. Jur. Trials 1, Litigating Injury Claims Against Municipalities as to Parks and Recreation Facilities.

S.C. Jur. Negligence Section 43, Duty as to Invitees.

NOTES OF DECISIONS

In general 1

Owner 2

1. In general

The issue of whether the Recreational Use Statute (RUS) applied to negligence action was for the jury, in negligence action against university after licensee slipped and fell on university property. Harris v. University of South Carolina (S.C.App. 2011) 391 S.C. 518, 706 S.E.2d 45, rehearing denied, certiorari denied. Education 1098

Because the Recreational Use Statute is in derogation of the common law, it must be strictly construed. Corbett v. City of Myrtle Beach, S.C. (S.C.App. 1999) 336 S.C. 601, 521 S.E.2d 276. Negligence 1193

Recreational use statute barred spectator’s claims against little league, school, and school district for injuries sustained in trip and fall on grounds of school while attending T‑ball game; T‑ball qualified as “summer sport” for purposes of recreational use statute and spectator’s permission to attend game was clearly implied by lack of admission fee. Brooks v. Northwood Little League, Inc. (S.C.App. 1997) 327 S.C. 400, 489 S.E.2d 647, rehearing denied, certiorari dismissed. Education 203

2. Owner

Contractor whose franchise agreement with city required contractor to furnish lifeguards for city‑owned beach front was not “occupant” or “person in control of the premises,” and thus, contractor was not “owner” and was not entitled to protection under Recreational Use Statute in wrongful death action arising from drowning; franchise agreement reserved to city considerable control over contractor’s operations, going so far as to schedule lunch breaks for lifeguards and provide specifications for guard towers, and contractor lacked power to either provide or prevent public access to beach. Corbett v. City of Myrtle Beach, S.C. (S.C.App. 1999) 336 S.C. 601, 521 S.E.2d 276. Negligence 1194

**SECTION 27‑3‑30.** Duty of care.

 Except as specifically recognized by or provided in Section 27‑3‑60, an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to such persons entering for such purposes.

HISTORY: 1962 Code Section 51‑83; 1968 (55) 3047.

Library References

Negligence 1196.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 399, 538.

NOTES OF DECISIONS

In general 1

Affirmative defenses 3

Assumption of risk 2

1. In general

Landowners owe no duty of care to keep the premises safe for recreational users and need not give any warning of a dangerous condition, use, structure or activity on the property. Cole v. South Carolina Electric and Gas, Inc. (S.C.App. 2003) 355 S.C. 183, 584 S.E.2d 405, rehearing denied, affirmed as modified 362 S.C. 445, 608 S.E.2d 859. Negligence 1193

Under the Recreational Use Statute, landowners owe no duty of care to keep the premises safe for recreational users and need not give any warning of a dangerous condition, use, structure or activity on the property. Corbett v. City of Myrtle Beach, S.C. (S.C.App. 1999) 336 S.C. 601, 521 S.E.2d 276. Negligence 1196

Recreational use statute barred spectator’s claims against little league, school, and school district for injuries sustained in trip and fall on grounds of school while attending T‑ball game; T‑ball qualified as “summer sport” for purposes of recreational use statute and spectator’s permission to attend game was clearly implied by lack of admission fee. Brooks v. Northwood Little League, Inc. (S.C.App. 1997) 327 S.C. 400, 489 S.E.2d 647, rehearing denied, certiorari dismissed. Education 203

2. Assumption of risk

Genuine issue of material fact as to whether golf course owed duty of care to roofer working on roof of home adjacent to golf course precluded entry of summary judgment for golf course in negligence action brought by roofer for injuries he received when he was hit by errant golf ball while he was working on roof; roofer was not playing golf and could not be said to have assumed risk of being hit by golf ball. Schmidt v. Courtney (S.C.App. 2003) 357 S.C. 310, 592 S.E.2d 326, rehearing denied, certiorari denied. Judgment 181(33)

3. Affirmative defenses

Trial court committed reversible error by not placing the burden of proving the affirmative defense of assumption of risk with owner of recreational beach area in its jury charge in negligence action brought against owner by estate of patron, who drowned while swimming in recreational beach area. Cole v. South Carolina Electric and Gas, Inc. (S.C.App. 2003) 355 S.C. 183, 584 S.E.2d 405, rehearing denied, affirmed as modified 362 S.C. 445, 608 S.E.2d 859. Appeal And Error 1064.1(8); Negligence 1747

**SECTION 27‑3‑40.** Effect of permission to use property for recreational purposes.

 Except as specifically recognized by or provided in Section 27‑3‑60, an owner of land who permits without charge any person having sought such permission to use such property for recreational purposes does not thereby:

 (a) Extend any assurance that the premises are safe for any purpose.

 (b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

 (c) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

HISTORY: 1962 Code Section 51‑84; 1968 (55) 3047.

Library References

Negligence 1196.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 399, 538.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Negligence Section 43, Duty as to Invitees.

NOTES OF DECISIONS

In general 1

Charge for use 2

1. In general

Landowner’s failure to post sign warning fishermen that they may fall from rocks along shoreline into river below does not constitute grossly negligent, willful, or malicious conduct. Chrisley v. U.S. (D.C.S.C. 1985) 620 F.Supp. 285, affirmed 791 F.2d 165.

The issue of whether the Recreational Use Statute (RUS) applied to negligence action was for the jury, in negligence action against university after licensee slipped and fell on university property. Harris v. University of South Carolina (S.C.App. 2011) 391 S.C. 518, 706 S.E.2d 45, rehearing denied, certiorari denied. Education 1098

2. Charge for use

Parking fee paid by driver of vehicle in which swimmer was passenger was not “charge” for swimmer’s right to use swimming area of lake, within meaning of exception to immunity from liability under Recreational Use statute for injury to invitees or licensees that were charged by landowner for recreational use thereof, where not everyone in vehicle had to pay for admission to swimming area, and persons who walked or rode bicycles to swimming area were not charged admission. Cole v. South Carolina Elec. & Gas, Inc. (S.C. 2005) 362 S.C. 445, 608 S.E.2d 859, rehearing denied. Negligence 1195

**SECTION 27‑3‑50.** Application of Sections 27‑3‑30 and 27‑3‑40 to land leased to State or political subdivisions.

 Unless otherwise agreed in writing, the provisions of Sections 27‑3‑30 and 27‑3‑40 shall be deemed applicable to the duties and liability of an owner of land leased to the State or any subdivision thereof for recreational purposes.

HISTORY: 1962 Code Section 51‑85; 1968 (55) 3047.

Library References

Negligence 1194.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 399, 538.

**SECTION 27‑3‑60.** Certain liability not limited.

 Nothing in this chapter limits in any way any liability which otherwise exists:

 (a) For grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

 (b) For injury suffered in any case where the owner of land charges persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

HISTORY: 1962 Code Section 51‑86; 1968 (55) 3047.

Library References

Negligence 1197.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 399, 538.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Negligence Section 8, Gross Negligence.

Treatises and Practice Aids

18 Causes of Action 613, Cause of Action for Personal Injury or Death in Which Recreational Use Statute is Raised as Defense.

NOTES OF DECISIONS

In general 1

Applicability of regulations 6

Assumption of risk 3

Charge for use 4

Gross negligence 2

Guest status 5

1. In general

Regulation governing natural public swimming areas that imposed owner responsibility for lifeguards and lifesaving equipment did not apply to determination whether recreational site owner violated duty to swimmer to exercise slight care under Recreational Use statute. Cole v. South Carolina Elec. & Gas, Inc. (S.C. 2005) 362 S.C. 445, 608 S.E.2d 859, rehearing denied. Negligence 1196

Recreational use statute barred spectator’s claims against little league, school, and school district for injuries sustained in trip and fall on grounds of school while attending T‑ball game; T‑ball qualified as “summer sport” for purposes of recreational use statute and spectator’s permission to attend game was clearly implied by lack of admission fee. Brooks v. Northwood Little League, Inc. (S.C.App. 1997) 327 S.C. 400, 489 S.E.2d 647, rehearing denied, certiorari dismissed. Education 203

2. Gross negligence

“Gross negligence” is intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. Brooks v. Northwood Little League, Inc. (S.C.App. 1997) 327 S.C. 400, 489 S.E.2d 647, rehearing denied, certiorari dismissed. Negligence 273

Little league, school, and school district were not grossly negligent in causing spectator’s injuries sustained in trip and fall while attending T‑ball game, such that gross negligent exception to immunity afforded under recreational use statute was inapplicable. Brooks v. Northwood Little League, Inc. (S.C.App. 1997) 327 S.C. 400, 489 S.E.2d 647, rehearing denied, certiorari dismissed. Education 203

3. Assumption of risk

Warning posted by owner of recreational site that no lifeguard was on duty at swimming area of lake did not establish as matter of law that swimmer assumed risk of drowning, in wrongful death action brought by personal representative’s of swimmer’s estate against site owners. Cole v. South Carolina Elec. & Gas, Inc. (S.C. 2005) 362 S.C. 445, 608 S.E.2d 859, rehearing denied. Negligence 1719

Instructions that personal representatives of swimmer’s estate would fail to meet burden of proof in wrongful death action against owner of recreational site if, after all evidence was presented, scales remained even or slightly tipped in favor of owner, that jury should consider owner’s defenses, and that it should find for owner if jury found swimmer assumed risk of drowning by swimming in deep water, did not inform jury of standard of proof required for owner to show that swimmer assumed risk. Cole v. South Carolina Elec. & Gas, Inc. (S.C. 2005) 362 S.C. 445, 608 S.E.2d 859, rehearing denied. Negligence 1747

Error in failing to instruct jury that recreational site owner had burden of proving that swimmer assumed risk of drowning by swimming in deep water was not harmless, in wrongful death action brought by personal representatives of swimmer’s estate; owner had duty to warn swimmer of concealed dangerous conditions or activities known to it, and thus, whether swimmer assumed risk by voluntarily exposing himself to danger, such as would preclude finding that pool owner breached duty, was question for jury. Cole v. South Carolina Elec. & Gas, Inc. (S.C. 2005) 362 S.C. 445, 608 S.E.2d 859, rehearing denied. Appeal And Error 1067

4. Charge for use

Parking fee paid by driver of vehicle in which swimmer was passenger was not “charge” for swimmer’s right to use swimming area of lake, within meaning of exception to immunity from liability under recreational use statute for injury to invitees or licensees that were charged by landowner for recreational use thereof, where not everyone in vehicle had to pay for admission to swimming area, and persons who walked or rode bicycles to swimming area were not charged admission. Cole v. South Carolina Elec. & Gas, Inc. (S.C. 2005) 362 S.C. 445, 608 S.E.2d 859, rehearing denied. Negligence 1195

5. Guest status

Social guest of homeowner‑members of private nonprofit pool and tennis club operated by group of homeowners was licensee rather than invitee, for purposes of determining club’s duty of care, in guest’s negligence action against club relating to diving accident in swimming pool; guest entered pool not by right but by permission of members, even if club charged non‑members a two‑dollar admission fee and limited the number of times a guest could visit. Vogt v. Murraywood Swim and Racquet Club (S.C.App. 2004) 357 S.C. 506, 593 S.E.2d 617, rehearing denied, certiorari denied. Clubs 11

6. Applicability of regulations

Even assuming trial court erred, in social guest’s negligence action against private nonprofit pool and tennis club operated by group of homeowners, relating to guest’s diving accident in swimming pool, by failing to instruct jury that regulations enacted by Department of Health and Environmental Control (DHEC) after construction of pool provided common law standard of care, guest was not prejudiced, where trial court allowed guest’s expert witness to rely on the later‑enacted DHEC regulations in rendering his opinion that swimming pool lacked sufficient depth in diving area. Vogt v. Murraywood Swim and Racquet Club (S.C.App. 2004) 357 S.C. 506, 593 S.E.2d 617, rehearing denied, certiorari denied. Appeal And Error 1067

**SECTION 27‑3‑70.** Construction.

 Nothing in this chapter shall be construed to:

 (a) Create a duty of care or ground of liability for injury to persons or property.

 (b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

HISTORY: 1962 Code Section 51‑87; 1968 (55) 3047.

Library References

Negligence 1193.

Westlaw Topic No. 272.

C.J.S. Negligence Sections 399, 538.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.