West's General Laws of Rhode Island Annotated Currentness
Title 32. Parks and Recreational Areas

Chapter 6. Public Use of Private Lands--Liability Limitations

§ 32-6-5. Limitation on chapter

(a) Nothing in this chapter limits in any way any liability which, but for this chapter, otherwise exists:

(1) For the willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity after discovering the user's peril; or

(2) For any injury suffered in any case where the owner of land charges the person or 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 that lease shall not be deemed a “charge” within the meaning of this section.

(b) When the coastal resources management council designates a right-of-way as part of its designation process as specified in § 46-23-6(5), or when the coastal resources management council stipulates public access as a condition of granting a permit, the landowner automatically will have “limited liability” as defined in this chapter, except as specifically recognized by or provided in this section.

CREDIT(S)

P.L. 1978, ch. 375, § 1; P.L. 1993, ch. 394, § 1.

LIBRARY REFERENCES

Negligence 1195, 1197.
Westlaw Key Number Searches: 272k1195; 272k1197.
C.J.S. Negligence §§ 399, 538.

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1/2. Validity

Recreational Use Statute exception, which provided that landowners who discover a recreational user in a position of peril must guard or warn against a dangerous condition, use, structure, or activity, was not impossible to apply to park user's personal injury claim against city for injuries suffered when she fell while fleeing swarm of bees in city park, and thus was not unconstitutional; rather, city's duty arose at the point when a city employee discovered that park user was approaching an area where there was a known risk of bees. Smiler v. Napolitano, 911 A.2d 1035 (2006). Municipal Corporations 851

Recreational Use Statute exception, which provided that landowners who discover a recreational user in a position of peril must guard or warn against a dangerous condition, use, structure, or activity, did not unconstitutionally deprive litigants of their day in court altogether, but rather merely lessened the common-law duty of care owed by owners of recreational property, thereby requiring successful litigants to prove willful or malicious conduct. Smiler v. Napolitano, 911 A.2d 1035 (2006). Constitutional Law 2314; Negligence 1002; Negligence 1196; Negligence 1197

3/4. Construction and application

Recreational Use Statute (RUS) would not be construed in an absurd and unjust manner so as to serve as an invitation for city to ignore known hazards while profiting from a major tourist attraction where such danger was present. Berman v. Sitrin, 991 A.2d 1038 (2010). Municipal Corporations 851

1. Trespassers

Pedestrian who was walking in city park at 2:00 a.m. in violation of city ordinance, stating that park is closed for public use between 9:00 p.m. and 6:00 a.m., was a “trespasser,” even though park was not so intensively posted as to notify all possible visitors of the hours of operation, for purposes of wrongful death action brought by parents of pedestrian, who fell from cliff to his death after ground beneath his feet gave way. Cain v. Johnson, 755 A.2d 156 (2000). Municipal Corporations 851

Landowner owes trespasser no duty except to refrain from willful or wanton conduct, and such duty arises only after trespasser is discovered in a position of danger. Cain v. Johnson, 755 A.2d 156 (2000). Negligence 1045(3); Negligence 1045(4)

Landowner does not owe trespasser any duty until after trespasser is discovered in a position of peril, and once trespasser is discovered, landowner owes trespasser a duty to refrain from willfully or wantonly injuring trespasser. Cain v. Johnson, 755 A.2d 156 (2000). Negligence 1045(3); Negligence 1045(4)

Neither city, state, nor university owed duty to pedestrian, who was a trespasser, for purposes of wrongful death action brought by parents of pedestrian, who was walking along area of city park that wound through university's campus and fell from cliff to his death after ground beneath his feet gave way; city, state, and university did not owe pedestrian/trespasser any duty until after he was discovered in a position of peril, and pedestrian/trespasser was never discovered in a position of peril. Cain v. Johnson, 755 A.2d 156 (2000). Colleges And Universities 5; Municipal Corporations 851; States 112.2(2)

2. Charges and fees for use

For a charge to constitute an admission fee under recreational use statute, such that owner's statutory immunity from liability does not apply, it must be established that the charge is imposed in return for recreational use of the land. Gen.Laws 1956, § 32-6-5(a)(2). Hanley v. State, 837 A.2d 707 (2003). Negligence 1195

When a charge is levied per vehicle without regard for the number of people inside and where no fee is charged to those entering the land by other means, then the mere payment of a per-vehicle fee to enter and park in a recreational area does not destroy the immunity granted by recreational use statute. Gen.Laws 1956, § 32-6-5(a)(2). Hanley v. State, 837 A.2d 707 (2003). Negligence 1195

Camping fee imposed on each vehicle that entered state park was not a “charge” to use property within meaning of recreational use statute, and thus such fee did not nullify state's immunity from liability for injuries camper suffered while walking on roadway; fee was not dependent on number of occupants in each vehicle, and no fee was imposed on recreational users who entered on foot or by bicycle. Gen.Laws 1956, § 32-6-5(a)(2). Hanley v. State, 837 A.2d 707 (2003). States 112.2(6)

3. Condition of land

Edge of cliff where pedestrian fell to his death was a natural condition of the land, and as such, liability could not be imposed upon either state, city, or university for purposes of wrongful death action brought by parents of pedestrian, who was walking along area of city park that wound through university's campus and fell from cliff to his death after ground beneath his feet gave way. Cain v. Johnson, 755 A.2d 156 (2000). Colleges And Universities 5; Municipal Corporations 851; States 112.2(2)

Even if cliff was considered artificial condition, liability could not be imposed upon either city, state, or university for purposes of wrongful death action brought by parents of pedestrian, who was walking along area of city park that wound through university's campus and fell from cliff after ground beneath his feet gave way; Restatement section providing that possessor of land who maintains artificial condition is subject to liability for harm caused to trespassers was not applicable because pedestrian should have been aware of and appreciated the risks. Restatement (Second) of Torts § 337. Cain v. Johnson, 755 A.2d 156 (2000). Colleges And Universities 5; Municipal Corporations 851; States 112.2(2)

4. Failure to warn

City engaged in a willful or malicious failure to warn or guard against a known danger posed by unstable ground under apparent footpaths leading from paved public walkway along oceanside cliff, thus invoking exception to landowner immunity under Recreational Use Statute (RUS); city voluntarily and intentionally failed to guard against the dangerous condition, knowing that there existed a strong likelihood that a visitor to the walkway would suffer serious injury or death, and city assumed control of the walkway while fully aware of its threatened stability. Berman v. Sitrin, 991 A.2d 1038 (2010). Municipal Corporations  851

Gen. Laws, 1956, § 32-6-5, RI ST § 32-6-5

Current through chapter 320 of the January 2010 session

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