

**" [CHAPTER 520
LANDOWNERS' LIABILITY]**

Section

- 520-1 Purpose
- 520-2 Definitions
- 520-3 Duty of care of owner limited
- 520-4 Liability of owner limited
- 520-5 Exceptions to limitations
- 520-6 Persons using land
- 520-7 Rights
- 520-8 Rules and regulations

Cross References

Access to control invasive species, see chapter 520A.
Emergency use of private real property, see chapter 135.
Exemption for providing emergency access, shelter, and subsistence during disasters, see §663-10.7.
Recreational activity liability, see §663-1.54.

Law Journals and Reviews

The Hawai'i Recreational Use Statute: A Practical Guide to Landowner Liability. 22 UH L. Rev. 237.

Case Notes

Hawaii recreational use statute immunized federal government from liability for negligence for injuries sustained at urban swimming pool. 945 F.2d 1134.

U.S. government immune from negligence liability under Hawaii recreational use statute (HRUS) for personal injuries suffered by plaintiff while plaintiff was using a military recreational facility, where (1) because the government did not impose a "charge" or "fee" for plaintiff to enter upon and use the recreational facility, plaintiff's use of the government's property was "without charge" under the statute; (2) the fact that dock on which plaintiff was injured was closed to everyone except the instructors and students of the sailing course on day of plaintiff's injury did not strip the government of its HRUS immunity; (3) plaintiff argued that legislative history indicated that HRUS was not intended to immunize businesses from liability to their business invitees, there was no need to resort to statute's legislative history in search of an exception that was clearly not included; and (4) although plaintiff may have had professional as well as personal reasons for taking the sailing course, plaintiff's alleged "professional" motivation did not convert plaintiff into a "nonrecreational" user; plaintiff's subjective intent was, in the situation, immaterial. 181 F.3d 1064.

United States' motion for summary judgment denied, where United States had not demonstrated that Hawaii recreational use statute exempted it from negligence liability to plaintiff stemming from plaintiff's accident on Pearl Harbor bike path while traveling to work by bicycle; plaintiff raised a material issue of fact as to whether plaintiff was a recreational user of the bike path. 180 F. Supp. 2d 1132.

Finding that rights to accreted lands could be acquired by adverse public use under implied dedication theory is

inconsistent with legislative intent to encourage landowners to make their property available to public for recreational uses. 73 H. 297, 832 P.2d 724.

Plaintiffs, by averring in their affidavits that they were on landowner's land for a commercial purpose at the time plaintiff sustained personal injury, generated a genuine issue of material fact whether they were on the land for a commercial purpose, in which case this chapter would not immunize the landowner from liability, or whether they were present for an exclusively recreational purpose, in which case this chapter would be available to landowner as a defense to plaintiff's negligence claim. 93 H. 477, 6 P.3d 349.

This chapter was not intended to have created a universal defense available to a commercial establishment such as landowner hotel, which has opened its land to the public for commercial gain, against any and all liability for personal injury merely because there is a "recreational" component to the establishment's operation. 93 H. 477, 6 P.3d 349.

Where plaintiff's injury occurred in an ocean area owned by the State, this chapter did not apply to the State as it does not apply to lands owned by the government; also, where the county was not a possessor of a fee interest nor a tenant, lessee, occupant, or a person in control of Queen's Bath, where the injury occurred, this chapter was not applicable to the county as an adjacent landowner. 110 H. 189, 130 P.3d 1054 (2006).

Trial court correctly concluded that scuba diving instructor's status on hotel property fell as a matter of law within the ambit of this chapter as a recreational user, inasmuch as instructor was engaged in "an activity in pursuit of the use of the property for recreational purposes" and, thus, that hotel was immunized from instructor's negligence claims under this chapter. 112 H. 472, 146 P.3d 1049 (2006).

" **[§520-1] 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. [L 1969, c 186, §1]

Case Notes

Cited: 557 F.2d 1308; 916 F. Supp. 1511.

" **§520-2 Definitions.** As used in this chapter:

"Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

"House guest" means any person specifically invited by the owner or a member of the owner's household to visit at the owner's home whether for dinner, or to a party, for conversation or any other similar purposes including for recreation, and includes playmates of the owner's minor children.

"Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government.

"Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.

"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, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

"Recreational user" means any person who is on or about the premises that the owner of land either directly or indirectly invites or permits, without charge, entry onto the property for recreational purposes. [L 1969, c 186, §2; gen ch 1985; am L 1997, c 272, §1]

Law Journals and Reviews

The Hawai`i Recreational Use Statute: A Practical Guide to Landowner Liability. 22 UH L. Rev. 237.

Case Notes

Plaintiff who suffered personal injuries while plaintiff was using a military recreational facility was not "charged" an "admission price or fee ... in return for ... permission to enter or go upon the [government's] land". 181 F.3d 1064.

Where plaintiff who was engaged in activity of boating argued that plaintiff was not engaging in a recreational activity while taking the sailing course, although plaintiff may have had professional as well as personal reasons for taking the course, plaintiff's alleged professional motivation did not convert plaintiff into a nonrecreational user; plaintiff's subjective intent was, in the situation, immaterial. 181 F.3d 1064.

No requirement that landowner open property to every person in the public in order to obtain protection under statute; defendant's duty to recreational user of property arose where defendant undertook and posted lifeguards at beach. 691 F. Supp. 256.

Where plaintiff alleged that the United States navy received a financial benefit from the Pearl Harbor bike path when its

members commuted by bicycle on the bike path, reducing the need for parking spaces at Pearl Harbor naval station, and that the city of Honolulu's bicycle registration fee constituted a "charge" under Hawaii recreational use statute (HRUS), the United States did not charge plaintiff to enter the bike path and the "charge" exception to HRUS was not applicable. 180 F. Supp. 2d 1132.

" **§520-3 Duty of care of owner limited.** Except as specifically recognized by or provided in section 520-6, 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, or to persons entering for a purpose in response to a recreational user who requires assistance, either direct or indirect, including but not limited to rescue, medical care, or other form of assistance. [L 1969, c 186, §3; am L 1997, c 272, §2]

Case Notes

Section renders United States not liable under Federal Tort Claims Act. 723 F.2d 705.

Encompasses any land which is used for recreation; purpose of statute is to encourage landowners to allow others to use their land without threat of liability; type of landowner covered by statute, discussed. 696 F. Supp. 538.

Cited: 902 F. Supp. 1207; 916 F. Supp. 1511.

Hawaii Legal Reporter Citations

No duty. 79 HLR 79-0809; 80-1 HLR 800137.

" **§520-4 Liability of owner limited.** (a) Except as specifically recognized by or provided in section 520-6, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes does not:

- (1) Extend any assurance that the premises are safe for any purpose;
- (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
- (3) Assume responsibility for, or incur liability for, any injury to person or property caused by an act of omission or commission of such persons; and

(4) Assume responsibility for, or incur liability for, any injury to person or persons who enter the premises in response to an injured recreational user.

(b) An owner of land who is required or compelled to provide access or parking for such access through or across the owner's property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for recreation purposes, or as part of a habitat conservation plan, or safe harbor agreement, shall be afforded the same protection as to such access, including parking for such access, as an owner of land who invites or permits any person to use that owner's property for recreational purposes under subsection (a). [L 1969, c 186, §4; am L 1996, c 151, §2; am L 1997, c 272, §3 and c 380, §9]

Case Notes

U.S. government immune from negligence liability under Hawaii recreational use statute (HRUS) for personal injuries suffered by plaintiff while plaintiff was using a military recreational facility, where (1) because the government did not impose a "charge" or "fee" for plaintiff to enter upon and use the recreational facility, plaintiff's use of the government's property was "without charge" under the statute; (2) the fact that dock on which plaintiff was injured was closed to everyone except the instructors and students of the sailing course on day of plaintiff's injury did not strip the government of its HRUS immunity; (3) plaintiff argued that legislative history indicated that HRUS was not intended to immunize businesses from liability to their business invitees, there was no need to resort to statute's legislative history in search of an exception that was clearly not included; and (4) although plaintiff may have had professional as well as personal reasons for taking the sailing course, plaintiff's alleged "professional" motivation did not convert plaintiff into a "nonrecreational" user; plaintiff's subjective intent was, in the situation, immaterial. 181 F.3d 1064.

Where, pursuant to subsection (a)(2), plaintiff was neither an invitee or licensee to whom a duty of care was owed, landowner owed no duty to prevent or warn plaintiff for plaintiff's use of landowner's land, access land, and use of public beach and ocean fronting land. 91 H. 345 (App.), 984 P.2d 104.

Cited: 902 F. Supp. 1207; 916 F. Supp. 1511.

" **[§520-5] Exceptions to limitations.** Nothing in this chapter limits in any way any liability which otherwise exists:

- (1) For wilful or malicious failure to guard or warn against a dangerous condition, use, or structure which the owner knowingly creates or perpetuates and for wilful or malicious failure to guard or warn against a dangerous activity which the owner knowingly pursues or perpetuates.
- (2) For 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 political subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.
- (3) For injuries suffered by a house guest while on the owner's premises, even though the injuries were incurred by the house guest while engaged in one or more of the activities designated in section [520-2].
[L 1969, c 186, §5]

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Hotel owner not liable for swimmer's injuries since owner did not charge swimmer for access to beach and had no duty to warn swimmer of dangerous surf. 634 F. Supp. 226.

False appearance of safety created by placement of inadequate or untrained lifeguards on beach, might result in potentially dangerous condition above and beyond natural danger created by ocean currents and surf; thus, government may be held liable to extent it created, and maliciously or wilfully failed to guard or warn against, the danger. 902 F. Supp. 1207.

Given staffing, training, and equipping of lifeguards on beach on day in question, beach was not rendered more dangerous than it would be for swimmers in its natural untouched state, where training of lifeguards was adequate; thus, question whether United States knew that its actions had rendered beach more dangerous for swimmers was answered in the negative, since United States' knowledge was irrelevant; plaintiff also failed to prove wilfulness. 916 F. Supp. 1511.

Where plaintiff alleged that the United States navy received a financial benefit from the Pearl Harbor bike path when its members commuted by bicycle on the bike path, reducing the need for parking spaces at Pearl Harbor naval station, and that the city of Honolulu's bicycle registration fee constituted a "charge" under Hawaii recreational use statute (HRUS), the United States did not charge plaintiff to enter the bike path and the "charge" exception to HRUS was not applicable. 180 F. Supp. 2d 1132.

" **[\$520-6] Persons using land.** Nothing in this chapter shall be construed to:

- (1) Create a duty of care or ground of liability for injury to persons or property.
- (2) Relieve any person using the land of another for recreational purposes from any obligation which the person may have in the absence of this chapter to exercise care in the person's use of such land and in the person's activities thereon, or from the legal consequences of failure to employ such care. [L 1969, c 186, §6; gen ch 1985]

" **[\$520-7] Rights.** No person shall gain any rights to any land by prescription or otherwise, as a result of any usage thereof for recreational purposes as provided in this chapter. [L 1969, c 186, §7]

Hawaii Legal Reporter Citations

Public prescriptive rights not barred. 80-2 HLR 800829.

" **[\$520-8] Rules and regulations.** The department of land and natural resources shall make rules and regulations pursuant to chapter 91, as it deems necessary to carry out the purpose of this chapter. [L 1969, c 186, §8]