



The historic common law rules have been modified by statute or judicial decision in many states. In Wyoming, landholders must now exercise reasonable care towards all entrants on their property with permission. They owe the same minimal duty towards trespassers required by the previous common law rules: not to willfully or wantonly harm them.

Many states have also created statutory exemptions for some recreational activities. [B] Wyoming has two such statutes. The first, Wyoming's Recreation Use Act, protects landholders who permit free public access to their lands for recreational pursuits. The statute limits the landholder's duties to authorized recreational entrants to that historically owed to trespassers: not to willfully or wantonly harm them. The second, Wyoming's Recreation Safety Act, exempts recreational and sporting activity providers from liability for injuries caused by inherent risks. The Safety Act applies regardless of whether a provider charges a fee. Neither statute exempts injuries caused by recreational or sporting equipment. The Recreation Use statute provides no protection for providers charging access fees. The protections afforded by the Recreation Safety Act for inherent risks are murky at best. The 10th Circuit Court of Appeals recently ruled that whether a risk is inherent is normally a question of fact for a jury to decide. [C]

- b. **Duties owed to guests for food and/or housing services**  
Ranch recreation enterprises that provide food or housing services to customers must comply with applicable local and state food and safety regulations. Wyoming food providers are subject to new regulations under the Wyoming Food, Drug, and Cosmetic Safety Act of 2000. Violation of these regulations may give rise to a legal cause of action for customers who can show that the violation led to their injuries.





Both common and contract law impose additional duties on food and housing providers. Food providers must exercise reasonable care in food preparation, handling, and storage. Similarly, by statute persons in Wyoming who routinely sell food products impliedly promise (warrant) that the food will be "merchantable" (i.e. will be of at least ordinary quality and would pass in the market without objection). Providers making specific promises regarding the food (e.g, vegetarian, kosher, peanut oil-free) will be legally liable if a customer is harmed because one of these promises is not satisfied.

Courts in several other states have held that providers of bed and breakfast and tourist cabins as well as typical motels and hotels are subject to special, innkeeper obligations. Under the common law innkeepers must exercise reasonable care in maintaining guest rooms, hallways, and other common areas; areas of ingress and egress; and other locations open to their customers. Wyoming courts have exempted providers from any liability associated with injuries caused by the natural accumulation of snow and ice. Also under the common law innkeepers were strictly liable for thefts of property from guests' rooms. Most states including Wyoming have created specific statutory exemptions from this liability for innkeepers who offer a place of safekeeping for guests' valuables. The Wyoming courts have not yet had an opportunity to decide whether these special, innkeeper rules apply to ranch recreation providers.

c. **Bailments**

Recreational operators who loan guests personal property for their use--horses, guns for target shooting, inner tubes for sliding down hills, etc.--are engaging in "bailments." Under the common law, individuals who loan personal property to others without charge (a gratuitous bailment) are only obligated to inform borrowers of any known defects. In contrast, ranch







recreation operators who rent equipment or animals to their guests for a fee (a mutual benefit bailment) are required to exercise reasonable care in inspecting, selecting, and maintaining the property. Wyoming's statutes also indicate that providers who routinely rent personal property to guests impliedly warrant that the items are of average quality and would pass in the market without objection. Providers who make specific promises or know of the special needs of a customer regarding the rented personal property (e.g., this horse is gentle or is appropriate for a small child) must be prepared to defend their decision if their customer is injured because the promise is not satisfied.

d. **Injuries caused by other animals under the control of the ranch recreation enterprise**

The common law holds owners of domestic animals liable for injuries they cause if the injured party can show that the animal had a dangerous tendency, the owner knew of this tendency, and the owner failed to protect the entrant. Owners of domestic animals are also liable if an entrant is injured because of the owners' negligence in handling the animal (e.g., shooting a gun off while a guest is petting a normally gentle horse). Owners of wild animals--the pet raccoon, for example--are absolutely liable for the injuries they cause. Entrants also have an obligation to exercise reasonable care around both domestic and wild animals.

e. **Injuries caused by the ranch recreation enterprise's employees**

Generally employers are liable for any actionable injuries caused by their employees, acting within the course of their employment. This concept is referred to as vicarious liability or respondent superior. The key question in these cases is whether the employee's actions were within the course of their employment. A ranch recreation enterprise would clearly be





liable if guests are injured when its employee, as part of his job, is negligent in driving them to the ranch. Liability would be fuzzier if the injury occurred when the employee and a guest left the ranch on their own to get a drink at a local saloon.

Wyoming and other states now recognize the doctrine of negligent hiring in holding employers liable for other actions of their employees. This doctrine typically come into play when an employee, acting outside the scope of his or her employment, harms a customer, as when an employee with a criminal record--discoverable upon reasonable inspection--sexually assaults a customer on an overnight trail ride he is leading. Courts have increasingly obligated employers to thoroughly investigate before hiring employees who are to be placed in positions of trust and responsibility.

3. **Step 2: possible legal risk management tools for ranch recreation enterprises**

Risk managers typically try to avoid, reduce, lessen, or transfer risk. Briefly, these strategies involve:

- Avoidance occurs when a business chooses not to engage in a risky activity.
- Risk prevention occurs when a business seeks to minimize the probability of harm.
- Risk reduction occurs when a business engages in activities designed to minimize the size of any resulting harm.
- Risk transfer occurs when a business seeks to transfer the risk to a third party (e.g., the guest, an insurance company, or another entity).







Risk avoidance is the preferred strategy if the possibility and size of the resulting risk is significant. The other strategies are optimal if the activity is valuable compared to the possible harm and the cost of implementing a specific tool is less than the resulting benefit created.

Risk transfer tends to require the assistance of a third party (e.g., an attorney or insurance agent) to implement. Risk prevention and reduction quite often can be done by the ranch recreation enterprise on its own. Table 2 at the end of this article illustrates several legal risk management tools for ranch recreation enterprises. [A]

*Avoidance.* Landholders can simply refuse title for access. This can be done on the entire property or partially by posting certain parts of the farm or ranch off-limits. A court could disregard the posting if guests were routinely allowed to enter "off limit" areas. Exclusion by posting may also be ineffective to curb legal liability for injuries to children (see discussion of the attractive nuisance doctrine above).

*Avoid charging fees for access.* As we indicated above, landholders not charging an access fee for recreational users are specifically protected from certain legal actions by Wyoming's Recreation Use statute. Not charging a fee, however, defeats the purpose of engaging in ranch recreation activity to supplement agricultural income. Landholders might charge only some entrants (big game hunters, for example) or for only certain services (free entrance but a charge for guiding, rental of a horse, etc.).

*Purchase of liability insurance.* An informal survey in the 1980s found at least one insurance company in Wyoming provided optional liability coverage for ranch recreation enterprises. [A] Other insurance companies contacted indicated that their existing farm/ranch policy would provide liability coverage to their customers, provided the enterprise was only a minor source of farmer or rancher's income. A similar study of insurance coverage for ranch recreation enterprises





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is to be conducted this fall. Readers should encourage their customers to discuss with their insurance agents available coverage for their ranch recreation enterprises.

*Release or waivers of liability signed by guests.* In a written release customers waive their rights to sue the provider for any injuries they might suffer as a result of the ranch recreation activity. The Wyoming Supreme Court has held that such releases may waive liability for negligence but not for injuries caused by gross negligence, by willful misconduct, or for services demanding a special duty to the public. The Wyoming Supreme Court has also held that recreational providers are not subject to a higher duty than other service providers and that recreational contracts are normally freely entered into by both parties. [A]

*Conducting the recreational enterprise through a legal entity with limited liability.* A traditional tactic to limit liability exposures is to choose a business form that limits the owners' personal liability. One of several legal forms providing this protection is the business corporation. This tactic does not provide much protection if the injury resulted from a shareholder/employee's own negligence or if most of the producer's assets are held by the corporation.

*Transferring recreational business to a guide or outfitter.* Farmers and ranchers may also grant recreational leases to guides or outfitters to bring customers onto their lands. These leases allow producers to transfer day-to-day responsibility for managing the recreational activity to a third party while still capturing a portion of their lands' recreational income potential. Transfer of recreational leases to outfitters or guides does not shield landholders from all liability. The common law generally holds landholders, who retain possession of their property, personally responsible for hidden defects on their lands. To avoid legal liability, landholders adopting this practice should continue to inspect and maintain their property. In addition, they should make sure that the guide or outfitter is insured and that the







landholder is also listed as a named insured on the guide or outfitter's policy.

*Establishing maintenance, training, and/or screening programs.*

Establishing a maintenance, training, and screening program constitutes an important risk prevention and reduction tactic. These efforts can include carefully screening guest-service employees before hiring, teaching personnel CPR, informing staff about health and safety regulations, establishing a routine equipment maintenance program, engaging in periodic inspections to discover and correct any problems, and developing and implementing checklists to alert guests of dangers and to assist them in case of accidents or employee misconduct.

**4. Step three: Implementing a legal risk management program for a ranch recreation enterprise (getting started)**

The first step in implementing a legal risk management program for a ranch recreation enterprise is assembling a risk management team. Team members should include the owners, ranch employees responsible for carrying out the program, the ranch's attorney, and its insurance agent. Owners may also want to contact other ranch recreation enterprises in the area to learn how these businesses currently are managing their legal risk. Some existing ranch recreation enterprises may permit potential operators to work at their places, thereby giving potential operators a real taste of what it is like to manage a ranch recreation enterprise.

Table 3 at the end of this article provides a basic checklist for implementing a legal risk management program for a ranch recreation enterprise. It walks readers and their customers through the three-step risk management process. If the readers' customers or their risk management team do not know the answer to a question posed by the checklist they should talk with someone who does. For example, if Wyoming readers or their customers are considering a bed and





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breakfast operation but do not know the fire or health code requirements, they should check with their county officials and the Wyoming Department of Agriculture to complete the checklist.

## **5. Conclusions and limitations**

Legal risk management involves three steps: 1) identification and quantification of legal risks; 2) examination and selection of particular risk management tools to handle these liability exposures; and 3) implementation, evaluation, and revision as new information and issues arise.

Section 2 indicates that a ranch recreation enterprise's liability risks are tied to the types of services it provides. Enterprises granting free access for recreational pursuits face limited legal liability exposures. Those offering overnight rooms, food service, and rental of personal property face the greatest.

Section three outlines a variety of legal risk management techniques. These tools range from avoidance to risk transfer. Each tactic has its own advantages and costs. A ranch recreation business's best strategy is to avoid injuring guests regardless of whether a legal liability exposure is involved. Winning a lawsuit will not overcome the negative publicity if a guest is injured. Guests as well as employees should be seen as partners in implementing the risk management process rather than as adversaries.

Although this publication is intended to provide general information regarding liability risk management to its readers, its primary focus is on Wyoming law. Even here it is limited. Not all the legal liability exposures ranch recreation operations might face (e.g., tax requirements, employment law, hunting regulations, etc.) have been discussed. Moreover, the rules governing the exposures that are discussed are likely to change. It is therefore important for readers to encourage their customers to work with their risk management team to







fashion the best legal risk management program for their ranch recreation operation and to keep in contact with their team to make sure that their plans are up-to-date.

6. **References cited**

- a. Schroeder, Alan & Rich Olson, "Minimizing Landholder Liability from Public Recreational Use of Private Lands," (University of Wyoming Cooperative Extension, under review, 2001).
- b. Centner, Terrence J., "Tort Liability for Sporting and Recreational Activities: Expanding Statutory Immunity for Protected Classes and Activities," 26 J. Legis. 1 (2000).
- c. Cooperman v. David, 214 F.3d 1162 (10th Cir. 2000).





Table 1: Care Required of Ranch Recreation Providers, Based Upon Types of Service Provided and Entrants' Status.

Nature of Service	Unapproved Access Only	Approved Access Only	Approved Access Plus Meals and Housing	Approved Access Plus Rental of Personal Property
Type of Access	Trespasser	Licensee or Business Invitee	Business Invitee	Licensee or Business Invitee
Standard of Care	May not willfully or wantonly harm. Special duties if trespasser is a child who is attracted to a dangerous artificial condition on the land.	Reasonable care. Special duties may be created if the landholder specifically warrants the safety of the land.	Reasonable care. Compliance with health and safety regulations. Special duties may be created as a result of contractual or common law duties owed guests by innkeepers.	Reasonable care in the maintenance, selection, or instructions given regarding personal property rented. Special duties may be created if provider expressly or impliedly warrants (promises) to the guests that the personal property rented is safe or fit for the particular purpose it is to be used.
Examples of Liability Exposures	Spring gun, placed in vacant building, injured a trespasser. Trespassing child injured when climbs on a poorly arranged hay stack.	Permitting camping (without warning) in an area which the landholder knows is subject to flash flooding.	Guest becomes sick after drinking unpasteurized milk or due to failure to properly vent cabin heater. Guest's room is broken into and jewelry stolen.	Rental of a horse with a known tendency to bite.
Additional Comments	Trespassers are also obligated to exercise reasonable care. Landholders are not liable to trespassing children for injuries caused by natural conditions.	Entrants are obligated to exercise reasonable care. Landholders are not liable to entrants for injuries caused by apparent hazards.	Guest are obligated to exercise reasonable care. Innkeeper liability for stolen property is subject to statutory exemption.	Borrower is obligated to exercise reasonable care in using rented personal property.

Source: [A].







**Table 2: Illustration of Several Risk Management Tactics to Minimize Liability.**

Activity	Type of Technique	Person(s) Involved	Effect on Liability Exposure	Activity/Possible Use by Reader or Customer
<ul style="list-style-type: none"> <li>--Lock Buildings.</li> <li>--Gates on Private Roads.</li> </ul>	Avoidance	Employer/ Employee(s)	Eliminate liability exposure by eliminating access. May not be effective if exceptions are made so that a pattern of admittance is shown or proof that landholder knew of trespassers prior to engaging in hazardous activity.	
<ul style="list-style-type: none"> <li>--Inspection Program.</li> <li>--Employee Screening Program.</li> <li>--Maintenance Program.</li> <li>--Use of Checklists to Warn Guests of Dangers and Instruct Them on Proper Equipment and Its Use.</li> <li>--Maintain Records on Accidents</li> <li>Identifying Causes, Responses, and Measures Undertaken to Eliminate Recurrence.</li> </ul>	Reduce the Probability of Injury	Employer/ Employee(s) Use of Safety Specialist	Reduce/eliminate liability exposure by lessening likelihood that injury will occur. Well documented screening, maintenance, and training program can evidence that business has exercised due care. BE CAUTIOUS: Record of recurring but not corrected problems would evidence failure to exercise due care.	
--First Aid Training and Equipment.	Reduce Amount of Any Possible Claim	Employer/ Employee(s) Use of Safety Specialist	Reduce liability exposure by lessening the size of claim that would occur if an accident takes place.	
--Purchase of Insurance.	Transfer	Landholder/ Insurance Company	Transfer risk to Insurance Company. Insured may also take advantage of additional services provided by Insurance Company including safety inspections. May be ineffective if not all necessary lands, employees, or activities are covered.	
--Releases or Accident Waivers.	Transfer	Landholder/ Entrants/ Attorney	Transfer risk of loss to entrant. Releases may be ineffective if improperly drawn, if they attempt to waive statutory duties or intentional or grossly negligent acts, or if entrant did not clearly intend to waive this particular risk.	
--Adopt Business Form (e.g., corporation, limited liability company) that limits owner's liability to value of contribution to the business.	Transfer	Landholder/ Attorney	Transfer of liability to separate legal entity. Transfer proves only limited protection to landholders if all of their assets are given to the legal entity, if landholders retain liability for injuries caused by the land they control, or the landholder--acting as an employee of the entity--causes the injury.	
--"Lease" Recreational Rights to Outfitter(s) or Guide(s).	Transfer	Landholder/ Outfitters/ Attorney	Transfer liability risk for negligence in provision of services to outfitter(s)/guide(s). Landholder will retain liability for actionable injuries on lands under landholder's control.	

Source: [A].



