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Hunting Liability in Kansas: Premises Liability and the Kansas Recreational Use Statute

by

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Hunting Liability in Kansas: Premises Liability and the Kansas Recreational Use Statute

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Every fall, thousands of hunters pursue game in Kansas, whether it be quail, pheasant, deer or the many other species commonly hunted in the state. The vast majority return from their hunts without incident. However, accidents do occur.

Most hunting in Kansas is conducted on privately-owned land, and the question arises of the potential liability of a landowner for accidents occurring on his or her land. In some cases, fear of liability may cause a landowner to close his property to hunting or recreational activity of any kind.

This paper will discuss the standards of liability in these situations and the application of the Kansas Recreational Use Statute as a shield to that liability for the landowner who allows hunting access to his or her property.

I. PREMISES LIABILITY FOR HUNTERS AND LANDOWNERS

A. The Standard of Care

The standards of care owed by a landowner to persons on his or her land appear to be well-defined. Application of those standards to particular facts, however, is not so straightforward.

First, a landowner owes a trespasser only a duty to refrain from willfully, wantonly or recklessly injuring the trespasser.[1] A trespasser is defined as "one who enters on the premises of another without any right, lawful authority, or an express or implied invitation or licence."[2] Second, a landowner's duty to all other

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1. Jones v. Hansen, 867 P.2d 303 (Kan. 1994).
2. *Id.* at 306.

persons on the land is "one of reasonable care under all of the circumstances."[3]

In *Jones v. Hansen*,[4] the Kansas Supreme Court eliminated the judicial distinction previously drawn between licensees and invitees.[5] Prior to *Jones*, a licensee, defined as one who simply entered with the express or implied consent of the owner, was owed only a duty by the landowner to refrain from willfully or wantonly injuring the licensee. On the other hand, an invitee, defined as one who enters the premises at the express invitation of the landowner, was owed the higher duty of reasonable care. This duty of reasonableness included an active duty to protect the invitee and warn against "reasonably anticipated" dangers.[6]

The importance of this reassessment of duty in the context of hunting is that landowners, who simply gave permission for hunting access when asked, could likely rely on the "willful or wanton" standard accorded to licensees. After the *Jones* case, unless the Kansas Recreational Use Statute (discussed *infra*) applies, the landowner who gives permission assumes an active duty to protect the hunter against "reasonably anticipated" dangers, the same standard that formerly applied to the invited guest or the business customer who had paid for hunting access to a commercial for-profit hunting business operation.

Further, the existence of the licensee-invitee distinction gave counsel for a landowner a basis to dispose of a claim through a summary judgment motion. The "reasonableness" component of the new standard may make it much easier for a plaintiff to survive such a motion and get the case to trial.

The *Jones* court held that the reasonableness of a landowner's actions should be judged using a number of factors:

> Included in the factors that are to be considered in determining whether, in the maintenance of his or her property, the land occupier exercises reasonable care under all circumstances are the foreseeability of harm

3. *Id.* at 310.
4. 867 P.2d 303 (Kan. 1994).
5. *Id.* at 310.
6. *Id.* at 306.

> to the entrant, the magnitude of the risk of injury to others in maintaining such a condition of the premises, the individual and social benefit of maintaining such a condition, and the burden upon the land occupier and/or community, in terms of inconvenience or cost, in providing adequate protection.[7]

The court further held, "In applying the duty of reasonable care under all the circumstances to licensees as well as invitees, we are mindful that Kansas has recognized that there are limits to 'reasonable care.'"[8] For example, in *Agnew v. Dillons, Inc.*,[9] the Kansas Court of Appeals held: "[A] proprietor must use ordinary care to keep those portions of the premises which can be expected to be used by a business invitee in a reasonably safe condition. However, a proprietor is not an absolute insurer of the safety of customers."[10] The court, addressing the facts of the case, held a business proprietor, absent unusual circumstances, may await the end of a winter storm and a reasonable time thereafter to remove ice and snow from outdoor entrance walks, platforms, or steps because it is impractical to take action earlier.[11] This example highlights the fact-specific inquiry a court will take to consider whether a landowner was "reasonable" under the circumstances.

The duty to remedy "open and obvious" dangers has been a matter of some debate in Kansas. The supreme court has stated the general rule:

> Generally, a possessor of land is under no duty to remove known and obvious dangers. However, the possessor may be under an affirmative duty to minimize the risk if there is reason to expect an invitee will be distracted, so that he or she will not discover what is obvious, will forget what has been discovered, or will fail to protect against the danger.[12]

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7. *Id.* at 310.
8. *Id.*
9. 822 P.2d 1049 (Kan. Ct. App. 1991).
10. *Id.* at 1051.
11. *Id.* at 1054.
12. Miller v. Zep Mfg. Co., 815 P.2d 506, 514 (Kan. 1991) (citations omitted).

However, "open and obvious" is a phrase that either side could use in a dispute. The argument could be made, for example, that entering property with other hunters is an "open and obvious" danger the landowner should not be required to remove. A counter-argument might be that hunters may distract one another, creating a foreseeable danger the landowner should be required to minimize, perhaps by limiting the number of hunters allowed on the land or enforcing safety standards.

B. The Mode-of-Operation Rule

The imposingly factual "reasonableness" inquiry has been further clouded by the mode-of-operation rule. The Kansas Supreme Court summarized this rule as follows:

> The mode-of-operation rule generally allows a plaintiff in a slip-and-fall case to recover without showing the proprietor's actual or constructive knowledge of a dangerous condition if the plaintiff shows the proprietor adopted a mode of operation where a patron's carelessness should be anticipated and the proprietor fails to use reasonable measures commensurate with the risk involved to discover the condition and remove it.[13]

Hence, the liability of a landowner who permits hunting on the property may be based on the mode of operation of the land.

The mode-of-operation rule may be limited in application to self-service retail businesses. However, a landowner who permits hunting on his land may find a court willing to apply the mode-of-operation rule to his case.

Consider, for example, certain devices that courts have found to be inherently dangerous:

> Generally, instrumentalities or substances which by their very nature are calculated to do injury are

13. Jackson v. K-Mart Corp., 840 P.2d 463, 464 Syl. ¶ 2 (Kan. 1992).

> considered to be dangerous per se. Among the things which have been characterized as being dangerous instrumentalities are: poisons; explosives and explosive devices; *firearms, particularly if they are loaded*; explosive substances; grinding wheels which contain a latent defect causing them to explode or disintegrate upon ordinary use; dry ice; bottles of beverages under pressure or containing any ingredient which would cause them to explode upon ordinary handling; and, in some cases, airplanes.[14]

Based on these examples, a landowner who knows firearms will be on his property may be held to a higher standard of care based on that mode of operation. In other words, a landowner who knows firearms will be on his property may be on notice that an injury could be sustained. The landowner, held to the *Jones* standard of care (with an active duty to protect the persons on his land) may be obligated to supervise the hunting, something many landowners may not consider.

Some factual situations in which this issue may arise are those where a landowner permits more than one group of hunters onto his land at the same time, several individual hunters at once, or deer hunters and bird hunters at the same time in overlapping seasons.

The landowner may be expected to foresee that the different individuals or groups may encounter each other. Is the landowner obligated to inform each hunter or group of hunters that they may encounter others during the day? Must they be segregated into separate areas of the property? Many hunters may consider it important to know that there are other individuals or groups on the same property who may also be shooting. Should landowners expect carelessness from hunters and be required, by law, to take steps to protect others against it?

Some case law suggests a landowner could be liable for injuries to persons on the property, caused by other hunters also allowed on the property. In a case concerning a store's liability, the Kansas Supreme Court held:

> A proprietor would not be liable for a dangerous

14. Falls v. Scott, 815 P.2d 1104, 1109 (Kan. 1991) (emphasis supplied).

> condition on his premises caused by a third party absent actual or constructive notice of the condition, except where, based on the mode of operation, the proprietor could reasonably foresee that the dangerous condition would regularly occur.[15]

Under this definition, a plaintiff could argue landowners who allow hunters on their property should be held liable if a hunter is shot or otherwise injured by another hunter. Again, this argument seems most likely in the event an injury occurs where a hunter is injured by someone he did not know was also hunting on the property.

C. The Jury Question

Kansas courts recognize that "reasonable care" in premises liability cases is difficult to decide. The Kansas Supreme Court has admitted that applying this standard would be exceedingly difficult for a jury:

> If the traditional classifications are discarded the legal distinctions which have heretofore governed the courts in imposing a particular standard of care are also discarded. In such case the standard, reasonable care under all the circumstances, would have to be applied by the jury to the specific facts of each case. Can a lay jury reasonably be expected to consider the proper relative effect of natural and artificial conditions on the premises which are or may be dangerous, the degree of danger inherent in such conditions, the extent of the burden which should be placed on the possessor of premises to alleviate the danger, the nature, use and location of the condition or force involved, the foreseeability of the presence of the plaintiff on the premises, the obviousness of such dangerous condition or the plaintiff's actual knowledge of the condition or force which resulted in injury? It would appear these considerations should

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15. *Jackson*, 840 P.2d at 470.

> be imparted to the jury if it is to be placed in a position to decide whether reasonable care was exercised by the possessor of the premises. Otherwise the jury will have a free hand to impose or withhold liability.[16]

Are landowners required to discuss with hunters the possibility of poor terrain, dangerous animals (wild, agricultural or domestic), old homesteads and wells, unexpected trespassers, or any other potentially harmful conditions before allowing hunters on the property? Are landowners required to determine the extent to which those same hunters exercise careful gun handling? If the landowner assigns segregated areas of his property to different groups of hunters, is the landowner required to patrol the property to see that the boundaries are observed? These and more questions await answers.

II. THE KANSAS RECREATIONAL USE STATUTE

In light of the concerns raised to this point regarding the liability of landowners permitting hunting on their lands, it is now appropriate to discuss a legislative attempt to limit that liability in certain cases.

In 1965, the Kansas Legislature adopted the Kansas Recreational Use Statute (RUS).[17] The legislature passed the law for public policy reasons, writing, "The purpose of this act 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."[18] Similar legislation has been enacted in most states.

The most important feature of the statute is the limited liability it grants to landowners who open their property for recreational use. As the Kansas RUS reads:

> [A]n owner of land who makes all or any part of the

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16. Gerchberg v. Loney, 576 P.2d 593, 597 (Kan. 1978).

17. KAN. STAT. ANN. §§ 58-3201 to -3216 (1994 & Supp. 1998).

18. KAN. STAT. ANN. § 58-3201 (1994). *See also Survey of Kansas Law: Real and Personal Property*, 18 U. KAN. L. REV. 427, 438 (1970) (noting the statute was "designed to encourage landowners to allow their land to be used by the public for recreational purposes by limiting the landowner's liability toward persons who enter upon the land for such reasons").

> land available to the public for recreational purposes owes no duty of care to keep the premises, or that part of the premises so made available, 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. An owner of land who does take actions to keep the premises safe or to warn persons of a dangerous condition, use, structure or activity on the premises shall not be deprived of the protection which this law would provide had the owner not taken such actions or given such warning.[19]

Kansas courts have rarely interpreted the statute. However, the United States District Court for Kansas has given the following requirements for landowners to assert limited liability under the RUS:

> Although Kansas courts have not addressed the issue, courts in other states in which this legislation has been adopted have consistently held that a landowner receives the protection of the statute only by permitting free use of the land and facilities by the general public and that the statute does not apply to recreational activities in a residential setting. This interpretation is consistent with the statutory language which describes the legislation's purpose as "encourag[ing] owners of land to make land and water areas available to the public for recreational purposes."[20]

This case established four elements for a landowner to be exempted from liability under the Kansas RUS: (1) Free use; (2) Open to general public; (3) For recreational purposes; and (4) Outside of the residential setting. Under the statute, "recreational purpose" is

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19. KAN. STAT. ANN. § 58-3203 (Supp. 1998).

20. Mozier v. Parsons, 852 F. Supp. 925, 932 (D. Kan. 1994) (quoting KAN. STAT. ANN. § 58-3201 (1994)) (alteration in original) (citations omitted).

broadly defined, and "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."[21]

The statute adopts the following limitations:

> Nothing in this act 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 such person may have in the absence of this act to exercise care in his or her use of such land and in his or her activities thereon, or from the legal consequences of failure to employ such care.[22]

The only case discussing this section noted, "Nothing in the recreational use act shall be construed to create a duty of care or ground for liability."[23]

In addition, the statute creates two significant exemptions from its protection. First, the statute will still impose liability for "willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity."[24] Courts have interpreted "willful" to mean intentionally causing an injury, as opposed to intentionally acting in a manner that merely allows a wrong to occur.[25]

Second, an owner of "non-agricultural land" who "charges the person or persons who enter or go on the nonagricultural land for the recreational use thereof" will not be protected under the statute.[26] The statute defines "charge" as "the admission price or fee asked in return for invitation or permission to enter or go upon the land."[27]

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21. KAN. STAT. ANN. § 58-3202(c) (1994).
22. *Id.* § 58-3207 (1994).
23. Gonzales v. Board of County Comm'rs of Shawnee County, 799 P.2d 491, 495 (Kan. 1990) (citing KAN. STAT. ANN. § 58-3207).
24. KAN. STAT. ANN. § 58-3206(a) (1994).
25. Klepper v. City of Milford, Kansas, 825 F.2d 1440, 1447 (10th Cir. 1987).
26. KAN. STAT. ANN. § 58-3206(b) (1994).
27. *Id.* § 58-3202(d).

"Nonagricultural land" is all land other than "agricultural land."[28] "Agricultural land" is "land suitable for use in farming," including roads, water, watercourses and private ways located within the boundaries of the agricultural land, and includes buildings and machinery located on such land.[29]

In *Klepper v. City of Milford, Kansas*,[30] the plaintiff sued the city and the United States government for negligence in maintaining a public lake shore.[31] The United States had constructed Milford Lake for flood control, and the city had leased an area of the lake for a city park.[32] The city allowed the lake and newly constructed dock to be used by the public at no charge.[33] On August 5, 1978, while on weekend leave from the Army, the plaintiff dove head-first from a docked boat into shallow water, causing incomplete quadriplegia.[34] The plaintiff sued both the federal and state governments in separate suits; the plaintiff lost both actions, which were consolidated on appeal to the Tenth Circuit.[35]

All parties argued basic negligence principles in their initial pleadings. Both defendants originally asserted contributory negligence, arguing that the plaintiff knew or should have known of the shallow water at the end of the boat dock.[36] Some time later, the defendants amended their answers to plead the Kansas RUS as a defense.[37] In the suit against the City of Milford, the judge instructed the jury that Milford would only be liable if its conduct was "willful."[38] The jury found in favor of the city.[39] In the suit against the United States, the same judge who heard the Milford trial decided from the bench that the United States was not liable for the plaintiff's injuries.[40]

The *Klepper* decision carefully considered the Kansas RUS and offers the most comprehensive analysis available on the statute.

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28. *Id.* § 58-3202(g).
29. *Id.* § 58-3202(e).
30. 825 F.2d 1440 (10th Cir. 1987).
31. *Id.* at 1441.
32. *Id.* at 1442.
33. *Id.* at 1441.
34. *Id.* at 1441-42.
35. *Id.* at 1442-43.
36. *Id.* at 1443.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*

The court first noted the purpose of the statute: "[T]hese [recreational use] statutes promote casual recreational use of open space by relieving landowners of the concern that they will be sued for injuries to strangers who hunt, trek, fish, and otherwise recreate on their land or water free of charge."[41] The Kansas statute extends this protection to *all* owners of land, including government owners.[42] As such, the court relied on *Kansas Statutes Annotated* section 58-3204 as stating the general rule that defendants who open their property for recreational use *do not*:

> (a) Extend any assurance that the premises are safe for any purpose.
> (b) Confer upon such person the legal status of an invitee or a 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 or omission of such persons.[43]

However, section 58-3206 of the *Kansas Statutes Annotated* does not extend liability protection to a defendant who charges persons for entrance onto the land[44] or "[f]or willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity."[45] All parties conceded that Milford did not charge for use of the boat dock.[46] The plaintiff argued under the second exception that "Milford willfully failed to warn against the known danger of shallow water at the end of the dock."[47] Hence, the court's analysis focused on the definition of "willful" under the statute.

The court noted: "Construction of the Kansas RUS presents an issue of first impression. In its nineteen years, neither the Kansas courts nor the federal courts have had reason to construe its meaning."[48] Hence, the Tenth Circuit was obliged to read the statute as it

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41. *Id.* at 1444.
42. *Id.*
43. *Id.* at 1445 (citing KAN. STAT. ANN. § 58-3204).
44. KAN. STAT. ANN. § 58-3206(b) (1994).
45. *Id.* § 58-3206(a).
46. *Klepper*, 825 F.2d at 1445.
47. *Id.*
48. *Id.*

believed the Kansas Supreme Court would.[49] The plaintiff argued "willful" should include wanton or reckless disregard for the safety of others.[50] The jury instructions included in the definition of "willful," "An act performed or a failure to act with a designed purpose or intent on the part of a person to do wrong or to cause an injury to another is a willful act."[51] The court reasoned this instruction was consistent with Kansas pattern jury instructions: "The PIK was drafted by the Kansas Judicial Council and included this Comment following 3.03: '[a]lthough the words "wilful [sic] and wanton" are often used together, the Committee is of the opinion that wilful [sic] conduct is different than wanton conduct.'"[52] Interestingly, the current PIK makes the same distinction between willful and wanton. "Wanton" is defined as: "An act performed with a realization of the imminence of danger and a reckless disregard or complete indifference to the probable consequences of the act."[53] "Willful" is defined as: "An act performed with a designed purpose or intent on the part of a person to do wrong or to cause an injury to another."[54] In addition, the comment following 103.04 reads, "Although the words 'willful and wanton' are often used together, the Committee is of the opinion that willful conduct is different than wanton conduct, and that a separate instruction is justified."[55]

The Tenth Circuit used these pattern jury instructions and some case law to conclude that willful conduct is more extreme than wanton.[56] The court held: "Given the RUS phrase 'willful failure to guard' and not 'wanton failure to guard,' Kansas law directs the conclusion that unless the defendants *intended to injure* the plaintiff or otherwise had a *designed purpose or intent to do wrong*, they were not guilty of willful failure to guard."[57] The court recognized this

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49. *Id.* at 1445-46.

50. *Id.* at 1446.

51. *Id.*

52. *Id.* (quoting ADVISORY COMMITTEE OF THE KANSAS JUDICIAL COUNCIL, PATTERN INSTRUCTIONS OF KANSAS 2D, CIVIL, § 3.03 (1977)). The second edition of the instructions misspelled "willful" as indicated above. The pattern instructions have published a third edition, which has split "willful" conduct and "wanton" conduct into two separate sections. *See infra* notes 53-54 and accompanying text.

53. ADVISORY COMMITTEE OF THE KANSAS JUDICIAL COUNCIL, PATTERN INSTRUCTIONS OF KANSAS 3D, CIVIL, § 103.03 (1997).

54. *Id.* § 103.04.

55. *Id.*

56. *Klepper*, 825 F.2d at 1447.

57. *Id.* (emphasis supplied). The Tenth Circuit recently affirmed *Klepper* as "controlling authority" in Kansas. Bingaman v. Kansas City Power & Light Co., 1 F.3d 976, 982 (10th Cir. 1993).

interpretation may allow a government owner to avoid liability for reckless conduct; however, the court reasoned the Kansas Legislature is better situated to address such an issue.[58]

The plaintiff next argued the defendants waived their immunity under the Kansas RUS when they took steps to safeguard lake users from harm.[59] In other words, because the defendants assumed a duty to protect the public (including the plaintiff) from the dangers of the park, the defendants should be held accountable for failure to exercise that duty with due care.[60] The court rejected this argument, as the Kansas Legislature expressly adopted the Kansas RUS to limit liability.[61] All of the cases cited by the plaintiff to support his "assumption of duty" argument applied the principle without considering the statute at issue in the case.[62] In important language, the court reasoned:

> The RUS itself is a statutory modification of the common law of torts and provides for no liability for simple negligence. Instead, it provides for liability only where conduct is willful or malicious or where consideration is given in return for use of the recreational facilities. If the Kansas [L]egislature had wanted to provide for additional exceptions, such as liability for negligent inspections, it could have so stated. To rule otherwise would have the effect of defeating the purpose of the RUS.[63]

The Tenth Circuit affirmed the rulings in favor of the City of Milford

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58. *Klepper*, 825 F.2d at 1448.
59. *Id.*
60. *Id.* at 1449.
61. *Id.*
62. *Id.*
63. *Id.* at 1450. In 1995, the Kansas Legislature adopted this position rejecting any assumption of duty for a landowner who falls under the RUS, adding this statement to the statute:

> An owner of land who does take actions to keep the premises safe or to warn persons of a dangerous condition, use, structure or activity on the premises shall not be deprived of the protection which this law would provide had the owner not taken such actions or given such warning.

1995 Kan. Laws ch. 167 (H.B. 2546); *see also* KAN. STAT. ANN. § 58-3203 (1998 Supp.).

and the United States.[64]

This detailed review from the Tenth Circuit makes the risk analysis for landowners who permit hunting on their property an easier proposition. Landowners who open their nonresidential property to the public for recreational use without charge will not be held liable for injuries incurred on the property. The primary concern for landowners will be "willful or malicious" conduct causing injury on the property. However, as the *Klepper* opinion suggests, willful is a high standard for a plaintiff to prove. It requires that the landowner intended to cause injury.

One critical question not addressed by any cases of which we are aware is the question of defining the term "the public." Sections 58-3201 and -3203 refer to landowners who make land available to "the public."[65] Similarly, section 58-3204, refers to permitting "any person" to use the property.[66] It is widely known by hunters that many landowners exercise considerable, and quite arbitrary, discretion in deciding who is allowed to hunt on their land (the Kansas Walk-In Hunting Area program[67] is a notable exception). If a landowner allows certain persons to hunt, but not others, is the property actually "available to the public"? The question is important because the "available to the public" test appears to be a threshold to application of the statute. The answer is not yet available.

The Kansas Legislature has amended the statute to make clear its intention to protect landowners. The legislature in 1995 passed an amendment with the following effect, according to the Kansas Bar Association:

> The new language clarifies that landowners can open

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64. *Klepper*, 825 F.2d at 1450. The Tenth Circuit held in this opinion and subsequent cases that the United States is entitled to the protection of state recreational use statutes. Kirkland v. United States, 930 F. Supp. 1443, 1446 (1996) (citing *Klepper* and other Tenth Circuit cases where the government invoked state recreational use statutes). *See, e.g.*, 57 AM. JUR. 2D *Recreational Use Statutes* § 312 (1988) ("These provisions have been held applicable to governmental entities so as to relieve them of liability for injuries sustained by users of public beaches and similar recreational areas.").

65. KAN. STAT. ANN. §§ 58-3201 (1994), 58-3203 (1994 & Supp. 1998).

66. KAN. STAT. ANN. § 58-3204 (1994 & Supp. 1998).

67. The Kansas Department of Wildlife and Parks started the Walk-In Hunting Area Program in 1995; under the program, the state leases land from willing landowners and then open that land to hunters free of charge. *See* Brent Frazee, *Hunting for Access: Kansans Strive to Open Farm Gates in a State Where Public Land Is Scarce*, Kan. City Star, Oct. 18, 1998. At C14. The Department of Wildlife and Parks currently leases 494,000 acres in 96 counties, and plans to increase to 1,000,000 acres by 2004. Steve Halper, *WIHA to Retool, Then Expand*, Wichita Eagle, Feb. 7, 1999, at 14C.

> only portions of their property to the public and still enjoy the protection of this Act. In addition, if landowners opens [sic] their property to public recreation and take affirmation [sic] actions to place warnings or restrictions on the use of the premises, the owner will remain entitled to the benefit of the immunity from liability under the Act.[68]

Hence, the statute will not punish landowners for trying to protect the public (with warnings or safety rules) or for opening only portions of their property.

Government-owned property is given the same protections under the Kansas RUS. In addition, the state may have greater protection under the Kansas Tort Claims Act[69]:

> Prior case law addressing the recreational use exception suggests that the exception applies wherever the public uses property owned by a governmental entity for recreational purposes, regardless of any use restrictions. For example, in *Bonewell v. City of Derby*, 236 Kan. 589, 693 P.2d 1179 (1984), the court held that the recreational use exception provided immunity from liability for injuries received at a city-owned ballfield in a public park. The ballfield, like the golf course in this case, was designed for a single recreational activity. This fact did not prevent the court in *Bonewell* from applying the recreational use exception. 236 Kan. at 592. Likewise, the fact that the golf course has only one recreational purpose should not preclude application of K.S.A. 1991 Supp. 75-6104(o) in this instance.[70]

As previously discussed, if a landowner charges entrants for use of "nonagricultural land" or engages in willful misconduct, he will not be protected by the Kansas RUS. In that case, normal tort principles

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68. *Legislative Update*, J. KAN. B. A'SSN, Aug. 1995, at 17.

69. KAN. STAT. ANN. §§ 75-6101 to -6120 (1997 & Supp. 1998).

70. Gruhin v. City of Overland Park, 836 P.2d 1222, 1224 (Kan. Ct. App. 1992) (applying the Kansas Tort Claims Act).

would apply.

III. CONCLUSION

Landowners who open their property for hunting should carefully consider their obligations to those who are allowed access. The changes in premises liability law brought about by *Jones* make it even more important that landowners take any steps possible to bring their acts within the protection of the Kansas Recreational Use Statute. This paper has not discussed the use of contractual releases, but such devices may also aid the landowner in raising a shield to liability. Hunters seeking access to the lands of others should also consider the Kansas RUS and its limitations on the duties of the owner of the land on which they hunt.