



Liability Risks for After-Hours Use of Public School Property to Reduce Obesity:

FLORIDA

Michael Lettiero, Anne Martin, and Tom Baker

This memorandum summarizes Florida law governing liability for after-hours recreational use of school facilities. It should be read with this project's overview memorandum, which can be found at www.changelabsolutions.org/publications/liability-schools-50-states. It does not provide the kind of detailed analysis necessary to support the defense of a liability action, nor is it a substitute for consultation with a lawyer. If there are important cases, statutes, or analyses that we have overlooked, please inform us by sending an email to info@changelabsolutions.org.

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For a negligence action in the state of Florida, a plaintiff must prove four elements: (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached that duty, (3) the breach by the defendant caused an injury to the plaintiff, and (4) an actual injury or loss occurred.¹ For purposes of evaluating the legal rules that affect the liability risk involved in opening up schools to after-hours recreational use, the crucial issues involve the duty of the school district.

Part A of this memorandum addresses the duty of the school system. Part B addresses issues relating to limits on damages. Part C addresses two risk management issues that involve legal questions susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district.

A. Public Schools, the Duty Element, and After-Hours Use

Absent special liability protection, school districts and other providers of recreational facilities have the legal duty to take *reasonable* precautions to prevent injury. What is reasonable is very context specific and depends on many things, but most importantly the nature of the harm, the difficulty of preventing it, and generally accepted standards in the management of recreational facilities.

As any lawyer who has tried to explain the concept of negligence to a layperson knows, the standard of reasonable care can seem frustratingly vague and imprecise. Yet it is the standard that generally governs liability risk for organizations and individuals in the United States. On the whole, it is a flexible standard that balances the competing interests of the providers and users of many kinds of services.

This section explains the ways Florida law limits the legal duty of school districts. School districts are protected by

sovereign immunity, but the protection is narrow and waived for some negligent actions or intentional torts. This is discussed in subsection 1. Subsection 2 discusses the liability and indemnification of school employees, a topic closely related to schools districts' overall liability risk.

Subsection 3 discusses recreational user statutes, which sometimes also offer liability protection to school districts. Unlike those in many other states, however, Florida's recreational user statute does not apply to governmental entities, so it does not provide any protection to school districts except in the case of a few narrowly specified activities.

Subsection 4 discusses the impact of the Florida courts' continued recognition of the traditional distinctions among different categories of entrants on land. Subsection 5 concludes this part of the memorandum by comparing the legal duties that a school already faces for activity during the school day with the legal duties that the school would face if it permitted after-hours use of its facilities, a distinction that seems to matter in Florida only when an activity is not school sponsored.

1. Limited Duty Due to Sovereign Immunity

In 1973, the Florida state legislature passed the Tort Claims Act,² which waived the sovereign immunity of state agencies,³ including public schools,⁴ for negligence actions as well as intentional torts.⁵ Generally in Florida, the state and subdivisions—such as cities and municipalities—have sovereign immunity from tort liability unless it has been expressly waived.⁶ The passage of the Tort Claims Act opened all levels of government to liability for injuries caused by specified actions.⁷ The waiver of sovereign immunity has been construed to allow district school boards to be sued for tort liability, but not for acts of independent contractors employed by other government entities.⁸ Even if a school is compelled by statute to perform a task, such as providing transportation for students, the use of an independent contractor for that job, such as an independently managed school bus company, transfers liability from the school to that party.⁹

The Florida Supreme Court has established a two-part test to determine if a government entity is immune from suit. The first step is to determine if a common law duty of care exists.¹⁰ Governmental liability is not established unless a statutory or common law duty of care existed that would have been applicable to an individual under similar circumstances.¹¹ In *Trianon Park Condominium Association v. City of Hialeah*, the Supreme Court of Florida established four categories of governmental functions and decided in which of the four a duty of care could exist.¹² For present purposes, the two important categories imposing a duty of care are (1) capital improvements and property control functions, and (2) providing professional, education, and general services. Both categories are applicable to schools and both are categories in which the court decided that common law duties could exist.¹³

The second step is to determine if the negligent act is operational or discretionary.¹⁴ A government entity can be held liable in tort for operational functions but not for its discretionary functions.¹⁵ A discretionary function “means that the governmental act in question involved an exercise of executive or legislative power such that, for the court to intervene by way of tort law, it inappropriately would entangle itself in fundamental questions of policy and

planning.”¹⁶ An operational function “is one not necessary to or inherent in policy or planning, that merely reflects a secondary decision as to how those policies or plans will be implemented.”¹⁷ The Florida Supreme Court has established a four-part test to determine whether a challenged act is operational or discretionary:

1. Does the challenged act, omission, or decision necessarily involve a basic governmental policy, program, or objective?
2. Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one that would not change the course or direction of the policy, program, or objective?
3. Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and expertise on the part of the governmental agency involved?
4. Does the governmental agency involved possess the requisite constitutional, statutory, or lawful authority and duty to do or make the challenged act, omission, or decision?¹⁸

If any of the questions calls for or suggests a negative response, then the act is likely to be found operational and a government entity will be liable.¹⁹

Following Florida case law, it appears that the initial decision to open a school for an after-hours recreational program would be considered discretionary; thus the school would be protected from liability. A recreational program, especially one directed toward reducing childhood obesity, clearly involves a government policy or objective, and the use of school facilities is essential to accomplishing the goal. Schools would continue to have the same protection from liability that generally applies during the school day, except that opening the school premises after hours exposes the school to liability under all common law duties.²⁰

In *Avallone v. Board of County Commissioners*, the decision to operate a swimming facility was found to be discretionary, but once the swimming facility was up and running, the government “assume[d] the common law duty to operate the facility safely.”²¹ Also, in *Collazos v. City of West Miami*, the court stated that when the city exercised its discretion to provide adult supervision for children in an after-school park activities program, the city was obligated to perform this service in a “reasonably prudent manner” as a private individual would.²² Therefore, it is likely that once a school premises is opened for an after-hours recreational program, any and all common law duties could trigger liability. Furthermore, as in *Collazos*, if the school opted to provide supervision, all common law duties associated with it could lead to liability.

2. Duties and Indemnification of Public School Employees

Florida’s Tort Claim Act states that no officer, employee, or agent of the state or its political subdivisions can be held liable in a tort action, or be a named party as a defendant in any action, that arises out of an act or omission that occurs within the scope of employment or function.²³ The exclusive remedy for action against a governmental employee or agent is to sue the government entity or head of that entity in her official capacity.²⁴ This provision does not abolish the right of an injured party to sue and recover based on liability of a negligent employee; it

requires only that the plaintiff maintain against the government entity as the sole defendant.²⁵ If the employee or employee equivalent was acting within the scope of his employment, the state or political subdivision is authorized, although not required, to provide representation for the employee. It is further authorized to pay the final judgment, costs, and fees associated with a civil action.²⁶

Conversely, the Tort Claims Act does permit an employee or agent to be held personally liable if she acted in bad faith, acted with malicious purpose, or exhibited wanton and willful disregard of human rights, safety, and property.²⁷ In that event, the employee or agent is unlikely to receive a defense at public expense,²⁸ and the governmental entity would not be authorized to expend public funds to pay final judgments, costs, or fees associated with a civil action.²⁹ Under these laws, schools are responsible for any negligent acts of their employees or agents as long as the employees or agents were acting in good faith and within the scope of their employment. These provisions do not apply, however, to independent contractors.³⁰

3. Limited Duty Under Recreational User Statute

Florida's recreational user statute limits the liability of private landowners who make land available to the public free of charge for recreational uses.³¹ The statute does not cover the federal government,³² nor was it found to apply to other government entities such as counties or cities.³³ Therefore, the statute would not lessen the possibility of liability for a school district opening school grounds for access.

Nevertheless, Florida has another public access statute that applies to government owners or lessees of property that open their grounds for specified recreation activities. Florida Statute § 316.0085 provides that a government entity is not liable to any person who voluntarily participates in skateboarding, inline skating, paintball, or freestyle or mountain and off-road bicycling for any damage or injury to property or persons which arises out of a person's participation in such activity, and which takes place in an area designated for such activity.³⁴

The statute specifically exempts from this liability protection certain specified conditions such as the failure of the government to warn of a dangerous condition that a person could not have been reasonably expected to notice, gross negligence, or failure of the government to obtain written consent from participants under 17 years of age.³⁵ A school district would not be liable for injuries occurring during an after-school program for these specified activities if all of the conditions of this statute were met.

4. Limited Duty Due to the Historical Distinctions Among Entrants on Land

Florida follows the traditional approach to the duties owed to entrants on land and retains the three traditional classifications of trespasser, licensee, and invitee. Under that approach, the key question for this research is whether the people using the public school facilities after hours would be licensees or invitees. (Because children participating in an after-hours recreational program would have the permission of the school to be on the school grounds, they would not be trespassers.)

In Florida, as elsewhere, a licensee is an entrant who enters on the premises of another for convenience without an

invitation, expressly or implicitly implied, and their presence is neither sought nor forbidden.³⁶ For licensees, the possessor of the land has a duty to avoid willful or wanton harm and to warn of any known dangers not obvious to the entrant.³⁷ In *Davis By & Through Davis v. City of Miami*,³⁸ a Florida court classified an entrant visiting a public park after closing as a licensee. The individual's status as a minor did not affect the court's analysis. Following this decision, a minor who is on school property after hours when the school property has been closed, during a time when there is no after-hours program, would likely be considered a licensee. Thus, a school that simply left its grounds open after school, without organizing a program, may have more limited duties than a school that organizes a formal program to encourage activity.

In Florida, an invitee is a person who enters the premises at the invitation of the landowner,³⁹ with no distinction made between commercial, public, or social guests.⁴⁰ There are two basic duties owed to invitees: (1) to use reasonable care in keeping and maintaining the premises in a reasonably safe condition; and (2) to give notice to the invitee of concealed dangers that are known or should be known to the possessor that are unknown to the invitee and cannot easily be discovered through reasonable effort.⁴¹

Research did not indicate any Florida cases specifically addressing after-school-hours recreational users. Under Florida law, deciding whether someone is an invitee involves the "invitation test," which states that a person is an invitee when entering the premises by arrangement by the owner or possessor of the property where the owner or possessor leads the entrant to believe "that the premises are intended to be used by visitors for the purpose pursued by the entrant and that such use is in accordance with the owner's or occupant's intention."⁴² Under this standard, it appears likely that after-hours users under an arrangement where the school or a private or public agency organized a program would be considered invitees. In addition, a parent or other person entering school premises to obtain information for their child may also be considered an invitee under *Garufi v. School Board of Hillsborough County*.⁴³ In that case, the Florida District Court of Appeal found a mother who entered a high school was an invitee because the school board had knowledge of her presence to accomplish the "school related objective" of collecting books and assignments for her son.⁴⁴ The phrase "school related objective" has not been construed by another court, so it remains unseen what other purposes might fall under this classification.

5. Duty During the School Day and After: A Comparison

When deciding whether to open up school facilities for recreational use, it is useful to evaluate how the legal risk arising out of opening the school grounds for recreational use compares with the legal risk arising out of the use of school grounds for programs that the school already runs.

A school owes a general duty of care and supervision to a student placed in its care.⁴⁵ Schools have an obligation to keep students in orderly, disciplined classrooms conducive to learning without violence, distractions, or disruptive students.⁴⁶ A student must be under the control and direction of the principal or teacher at all times.⁴⁷ Florida courts have held that a school board and its teachers are "under a common law and statutory duty to supervise the activity of students under their care and control, and such duty is operational, not discretionary, and is not protected by sovereign immunity."⁴⁸ Providing inadequate or no supervision is a breach of this duty that thus makes the school

board liable.⁴⁹

The statute states that this heightened duty associated with students “shall not extend to anyone other than students attending school and students authorized to participate in school-sponsored activities.”⁵⁰ Therefore, a school has a higher duty to students than to ordinary entrants on school property. Research did not reveal any indication that this duty is affected by the fact that the school-sponsored activity took place outside of the usual school day, although the statute is clear about the time limits on the duties imposed. Aside from normal school hours, the schools have a duty to students both during the time they are on the school premises participating with authorization in a school-sponsored activity and during a reasonable time before and after students are on the premises for attendance at school or for authorized participation in a school-sponsored activity.⁵¹ As discussed in section C below, it is possible that a parks and recreation department or a private entity that used the school facilities to provide recreational opportunities on an after-hours basis may not have this same heightened duty as long as the activity is not seen as “school sponsored.”

B. Limits on Damages

Florida law limits damages specifically under the Tort Claims Act and generally for tort claims involving collateral or punitive damages. Damages against schools will generally be limited under the Tort Claims Act, although the state legislature retains the right to authorize higher judgments. Punitive damages are limited unless there is evidence of a specific intent to do harm. However, if this is the case it would be rare that an employee would be found to be acting within the scope of his employment, and schools would not be required to indemnify the individual.

1. Damages Limits Under State Tort Claims Act

The Florida Tort Claims Act contains a section limiting damages. The act states that the state or political subdivisions are liable for tort claims, but liability is not to extend to punitive damages or interest accrued during the period before judgment.⁵² The act limits the amount of damage to be paid to any single individual to \$100,000 or not more than \$200,000 when “totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence.”⁵³ Judgments in amounts that exceed these limits can be rendered, however, and, in that event, the excess judgment is reported to the legislature, which has the power to order the payment of the judgment in excess of the limits.⁵⁴ It is possible for a government entity to procure insurance coverage in excess of the statutory liability limits and to settle claims for judgments in excess of these limits without recourse to the state legislature for authorization.⁵⁵

2. General Damages Limits for Tort Claims

Florida has a variety of general damage limitations. Under Florida’s collateral source rule, where a party has admitted or a court has determined liability, “the court shall reduce the amount of such award by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources.”⁵⁶ No reduction will be made for sources where subrogation or reimbursement rights exist.⁵⁷

Collateral sources include, but are not limited to, government disability payments; any health, sickness, or income disability insurance; and automobile insurance.⁵⁸

Punitive damages have been legislatively restricted.⁵⁹ Generally, punitive damages cannot exceed the greater of three times the amount of the compensatory damages or \$500,000.⁶⁰ The court may award punitive damages not to exceed the greater of four times the amount of compensatory damages or \$2 million where the defendant's conduct was motivated by financial gain and there was a high likelihood of injury from the activity known to the defendant.⁶¹ The statute provides no cap on the amount of punitive damages the trier of fact may award when the defendant acted with a specific intent to do harm.⁶²

C. Selected Risk Management Issues

In this section we consider two risk management issues that involve legal questions that are susceptible to a generalized legal analysis: (1) whether a school district could avoid liability arising out of recreational programs by requiring the participants, or their parents or legal guardians, to sign liability waivers; and (2) whether a third party providing the recreational programming on school facilities would have the same duty of care as a school district or could indemnify or assume the liability of the district. In brief, we conclude that Florida courts seem receptive to recognizing liability waivers, especially for contact sports, and have expressly held that parents can contract to assume risk for their minor children. Third parties, either government entities or private organizations, appear to have the same duty of care as school districts, although they can agree to indemnify the school district when running activities on school grounds.

1. Liability Waivers

In Florida, an individual may expressly assume risk by contract or by participation in a contact sport, and express assumption of risk completely bars the individual from recovery.⁶³ Express agreements assuming risk must unambiguously indicate the risk to be assumed; otherwise they are seen to be contrary to public policy.⁶⁴ As for contact sports, express assumption of risk is limited only to contact sports where bodily contact is inherent in the sport and only to the risks intrinsic to that particular sport.⁶⁵ Traditional contact sports include team games such as football or soccer. Florida has also litigated cases finding that karate is a contact sport⁶⁶ and that swimming is not.⁶⁷

Florida courts have made it clear that a minor cannot contractually assume risk. In *Dilallo By & Through Dilallo v. Riding Safely*, a Florida appellate court evaluated the liability of a riding stable and held “that a [14-year-old] minor child injured because of a defendant’s negligence is not bound by her contractual waiver of her right to file a lawsuit.”⁶⁸ Parents, however, have the authority to assume the risk for their child in an express contract, including sporting activities such as cheerleading.⁶⁹

Florida courts have not been clear as to whether a minor can independently assume the risks inherent in contact sports; however, the courts have been clear that when this type of assumption of the risk does occur, it must be narrowly construed and does not include negligent supervision. In *Zalkin v. American Learning Systems*, a high school football player was found to have “waived risks inherent in the sport itself—those that arise from the bodily

contact with the other players,” but he did not waive risks like negligent supervision.⁷⁰ Yet, in *City of Miami v. Cisneros*, the court found that the minor child, 11 years old at the time, had assumed the risk of the contact sport because his parents allowed him to play football, but even so, this assumption did not include negligent supervision.⁷¹ The court in *Cisneros* stated that if the minor was legally competent, “his participation alone in this contact sport might well have supported the defense of express assumption of risk.”⁷² This finding is based on the policy interest of the judicial system to “protect those who rely on such a waiver and engage in otherwise prohibited bodily contacts.”⁷³ However, given that the minor was not of legal age, the court refused to allow this defense and considered claims of negligence against the coach, despite the parents’ and child’s consent to participate. The ability of a minor to assume the risk in contact sports may be based on the general standard behind assumption of the risk—that the participant must understand the risks of a particular conduct. But regardless of this level of understanding, a school or government agency is not protected from claims of negligent supervision.

2. Providing Access Through Third Parties

The Tort Claims Act allows a state or any government entity of the state to enter into a contract with another state government entity, but the contract “must not contain any provision that requires one party to indemnify or insure the other party for the other party’s negligence or to assume any liability for the other party’s negligence.”⁷⁴ This provision was interpreted in *Florida Department of Natural Resources v. Garcia* to mean that “government entities are only prohibited from entering into agreements to indemnify another government entity for the other entity’s negligence, or to assume any liability for the other entity’s negligence,” and therefore it was allowable for the city to indemnify the state for the city’s own negligence.⁷⁵ Following *Garcia* it would be allowable for a public entity like a city parks and recreation department to indemnify a school district, but only for the negligence of the city department, under their arrangement of school access. Finally, the statute allows for a party to require “a nongovernmental entity to provide such indemnification or insurance,”⁷⁶ thereby allowing a school district to be indemnified by a private entity providing after-hours recreational programs on school grounds under that arrangement of access.

The ability of a public or private entity to indemnify the school district does not appear to affect the duty of care owed to participants in an after-hours recreational program, meaning that there is no practical difference between the liability risks faced by a school district and the liability risks faced by a third party. This is an important question that will be addressed in future research on joint venture agreements for public schools.

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¹ FLA. JUR. 2D *Negligence* § 15 (2007) [hereinafter FLA. JUR.]; see *Williams v. Davis*, 974 So.2d 1052 (2007).

² FLA. STAT. ANN. § 768.28 (West 2012).

³ *Id.* § 768.28(2) (“As used in this act, “state agencies or subdivisions” include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.”).

⁴ The test to determine if an independent establishment is an agency or subdivision of a state is if the government exercises control “over the detailed physical performance and day to day operation of that entity.” FLORIDA PRACTICE, *Personal Injury & Wrongful Death Actions* § 9.3 (2007) [hereinafter FLA. PRAC.]. See also *Orlando v. Broward County, Fla.*, 920 So. 2d 54, 57 (Fla. Dist. Ct. App. 2005), which clearly includes schools and school boards within the category of state agencies.

⁵ For intentional torts, government entities are liable only when the torts are committed by employees within the scope of employment and not committed in bad faith, maliciously, or in willful or wanton disregard of safety. FLA. PRAC., *supra* note 4, at § 9.2.

⁶ FLA. JUR., *supra* note 1, at *Gov Liability* § 1.

⁷ FLA. STAT. ANN. § 768.28(1) (West 2012).

⁸ FLA. JUR., *supra* note 1, at *Gov Liability* § 13; *Duval County Sch. Bd. v. Kebert*, 909 So. 2d 438 (Fla. Dist. Ct. App. 2005) (holding the statute waiving sovereign immunity for school districts does not apply to buses operated by independent contractors).

⁹ *Kebert*, 909 So. 2d at 440.

¹⁰ FLA. PRAC., *supra* note 4, at § 9.6 (citing *Kaisner v. Kolb*, 543 So. 2d 732 (Fla. 1989)).

¹¹ *Trianon Park Condo. Ass’n v. City of Hialeah*, 468 So. 2d 912, 917 (Fla. 1985).

¹² *Id.* at 919-22.

¹³ *Id.* at 921.

¹⁴ FLA. PRAC., *supra* note 4, at § 9.6.

¹⁵ *Id.*

¹⁶ *Kaisner v. Kolb*, 543 So. 2d 732, 737 (Fla. 1989).

¹⁷ *Id.*

¹⁸ *Common Carrier Corp. v. Indian River County*, 371 So. 2d 1010 (Fla. 1979).

¹⁹ FLA. PRAC., *supra* note 4, at § 9.6.

²⁰ See section A4 below for a discussion of duties arising under common law premises liability.

²¹ 493 So. 2d 1002, 1005 (Fla. 1986).

²² 683 So. 2d 1161, 1163 (Fla. Dist. Ct. App. 1996). Interestingly, the court also stated that when a government entity sponsors or schedules an event at a park that is unreasonably dangerous or will draw a large crowd, the standard of care becomes a question for the jury. *Id.*

²³ FLA. STAT. ANN. § 768.28(9)(a) (West 2012).

²⁴ *Id.*

²⁵ FLA. PRAC., *supra* note 4, at § 9.4. This provision thereby limits the amount of recovery an injured party may obtain because the limits imposed by the Tort Claims Act will apply. *Id.*

²⁶ Government entities are “authorized to provide an attorney to defend any civil action arising from a complaint for damages or injury.” FLA. STAT. ANN. § 111.07. Government entities may pay any “final judgment, including damages, costs, and attorney’s fees, arising from a complaint for damages or injury suffered as a result of any act or omission of action of any officer, employee, or agent” in a civil lawsuit. *Id.* § 111.071.

²⁷ FLA. STAT. ANN. § 768.28(9)(a).

²⁸ A county, municipality, political subdivision, or agency of the state is authorized to provide a defense unless “the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” FLA. STAT. ANN. § 111.07.

²⁹ A county, municipality, political subdivision, or agency of the state is authorized to pay final judgments, costs, and fees for officers and employees only for situations described in § 111.07. FLA. STAT. ANN. § 111.071. Excluded are officers and employees who act in bad faith, with a malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. *Id.* § 111.07.

³⁰ *Id.*

³¹ FLA. STAT. ANN. § 375.251(2)(a).

³² *Terrell v. United States*, 783 F.2d 1562 (11th Cir. 1986).

- ³³ FLA. JUR., *supra* note 1, at *Premises Liability* § 50; *see City of Pensacola v. Stamm*, 448 So. 2d 39, 41 (Fla. Dist. Ct. App. 1984); *Chapman v. Pinellas County*, 423 So. 2d 578 (Fla. Dist. Ct. App. 1982).
- ³⁴ FLA. STAT. ANN. § 316.0085(4). The statute specifically includes in the definition of “government entity” school boards and special districts. *Id.* § 316.0085(2)(a)(2). The statute does not apply to independent people and organizations, even if the person or organization has a contractual relationship with the government. *Id.* § 316.0085(6).
- ³⁵ *Id.* at 5.
- ³⁶ FLA. PRAC., *supra* note 4, at § 10.5.
- ³⁷ *Id.* Florida courts have analogized the duties owed by the landowner or possessor to those enumerated in the Restatement (Second) of Torts § 342 (1965). *See also* Fla. E. Coast Ry. Co. v. Pickard, 573 So. 2d 850, 855 (Fla. Dist. Ct. App. 1990).
- ³⁸ 568 So. 2d 1301 (Fla. Dist. Ct. App. 1990) (holding that a minor in a public park after the park had closed was a licensee).
- ³⁹ Florida has rejected the “economic benefits test” in favor of the “invitation test,” which “bases ‘invitation’ on the fact that the occupier by his arrangement of the premises or other conduct has led the entrant to believe that the premises were intended to be used by visitors for the purpose which this entrant was pursuing, and that such use was not only acquiesced in by the owner or possessor, but that it was in accordance with the intention and design with which the way or place was adopted or prepared.” *Bishop v. First Nat’l Bank of Fla., Inc.*, 609 So. 2d 722, 724 (Fla. Dist. Ct. App. 1992) (citing *Smith v. Montgomery Ward & Co.*, 232 So. 2d 195, 198 (Fla. Dist. Ct. App. 1970)).
- ⁴⁰ FLA. PRAC., *supra* note 4, at § 10.6; FLA. JUR., *supra* note 1, at *Premises Liability* § 10. The category of social guest as invitee is actually called “licensee by invitation,” which, by definition, is a social guest who is on the premises by invitation of the landowner and obtains the same rights and duties as a traditional invitee. *Wood v. Camp*, 284 So. 2d 691 (Fla. 1973).
- ⁴¹ FLA. PRAC., *supra* note 4, at § 10.6; *Krol v. City of Orlando*, 778 So. 2d 490, 492 (Fla. Dist. Ct. App. 2001).
- ⁴² FLA. JUR., *supra* note 1, at *Premises Liability* § 10.
- ⁴³ 613 So. 2d 1341, 1342 (Fla. Dist. Ct. App. 1993).
- ⁴⁴ *Id.*
- ⁴⁵ FLA. JUR., *supra* note 1, at *Schools* § 242.
- ⁴⁶ *Id.*
- ⁴⁷ FLA. STAT. ANN. § 1003.31 (West 2012).
- ⁴⁸ *Doe v. Escambia County Sch. Bd.*, 599 So. 2d 226, 227-28 (Fla. Dist. Ct. App. 1992).
- ⁴⁹ *Id.*
- ⁵⁰ FLA. STAT. ANN. § 1003.31(2).
- ⁵¹ *Id.* § 1003.31(1)(c) & (d).
- ⁵² *Id.* § 768.28(5).
- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*
- ⁵⁶ FLA. STAT. ANN. § 768.76(1) (West 2012).
- ⁵⁷ *Id.*
- ⁵⁸ *Id.* § 768.76(2).
- ⁵⁹ *Id.* § 768.73.
- ⁶⁰ *Id.* § 768.73(1)(a).
- ⁶¹ *Id.* § 768.73(1)(b).
- ⁶² *Id.* § 768.73(1)(c); FLA. PRAC., *supra* note 4, at § 15.7.
- ⁶³ FLA. PRAC., *supra* note 4, at § 5.12.
- ⁶⁴ *Id.*
- ⁶⁵ *Id.*; *Mazzeo v. City of San Sebastian*, 550 So. 2d 1113, 1116 (Fla. 1989); *see also Ashcroft v. Calder Race Course*, 492 So. 2d 1309 (Fla. 1986).
- ⁶⁶ *Kuehner v. Green*, 436 So. 2d 78, 80 (Fla. 1983).
- ⁶⁷ *Mazzeo v. City of Sebastian*, 550 So. 2d 1113 (Fla. 1989).
- ⁶⁸ 687 So. 2d 353, 357 (Fla. Dist. Ct. App. 1997).
- ⁶⁹ *Global Travel Mktg., Inc. v. Shea*, 908 So. 2d 392 (Fla. 2005) (holding that parents have the authority to make the decision whether to waive a child’s litigation rights in exchange for participation in an activity the parent believes is beneficial for the child, in this case going on safari); *Krathen v. Sch. Bd. of Monroe County*, 972 So.2d 887; (Fla. Dist. Ct. App. Oct. 3, 2007) (holding that it was within a parent’s authority to sign a release for daughter to participate in cheerleading; therefore, both daughter and parent were bound by it).
- ⁷⁰ 639 So. 2d 1020, 1021 (Fla. Dist. Ct. App. 1994).
- ⁷¹ 662 So. 2d 1272, 1275 (Fla. Dist. Ct. App. 1995).
- ⁷² *Id.*
- ⁷³ *Id.* (citing *Kuehner v. Green*, 436 So. 2d 78, 80 (Fla. 1983)).
- ⁷⁴ FLA. STAT. ANN. § 768.28(19) (West 2012).
- ⁷⁵ 753 So. 2d 72, 77-78 (Fla. 2000).
- ⁷⁶ FLA. STAT. ANN. § 768.28(19).