

# LIABILITIES FOR INJURIES TO TRESPASSER IN ARKANNNSAS

*“With ownership comes responsibility, as we all know. That responsibility, as a property owner, creates specific duties to those individuals who are present on your property.”*



**Wesley A. Cottrell**



With ownership comes responsibility, as we all know. That responsibility, as a property owner, creates specific duties to those individuals who are present on your property. Each state has established its own laws regarding the potential for liability and the duties that are owed. The degree of liability is generally determined by the status of the person who was injured. A trespasser is owed the least amount of duty, but what exactly does that mean?

## Premises Liability in General



When an individual is injured on someone else's property, the claim is typically based on negligence. In other words, the injured party asserts that the property owner was negligent in performing his or her duty. To prove that case, the injured party must establish that the property owner owed him a duty, but breached that duty, and his injuries resulted from that breach. The status or classification of the injured person is

determined by the benefit that person provides to the property owner. The highest duty of care is generally owed to those that provide the most benefit.

## Duty to Trespassers



A trespasser is someone who is on the land without permission and who does not provide any benefit to the landowner. However, a property owner may not intentionally cause injury to a trespasser. Another exception is that, if the property owner is aware of trespassers who frequent his

property, there may be a slight duty. In that case, the duty would be only to warn of dangers that the trespasser would be unlikely to discover on his or her own, which could cause serious injury or death.

## A Higher Duty is Owed to a Child Trespasser

Although the lowest duty of care is to a trespasser, that only applies to adults. A property owner owes a child trespasser a greater duty in certain situations, due to the child's lack of maturity and inability to appreciate the risk of danger. Many states recognize what is known as the "attractive nuisance doctrine." This doctrine requires a property owner to take reasonable measures to protect young children from injury when there is an artificial condition created or

maintained by the property owner, and that condition is located in an area that would lure a child into danger. Some examples are artificial ponds, swings, ropes, docks, or boats. In some jurisdictions, swimming pools and trampolines are considered attractive nuisances.

### **Strict Liability for Extremely Dangerous Conditions**

There are some situations where, regardless of the status or classification of the person present on the land, the property owner will be held liable for any



injuries. This type of liability is referred to as "strict liability" because the reason for the person being on the land does not factor in.

This type of liability is found when the property owner creates a situation which is extremely dangerous,

even if all possible caution has been exercised. Essentially, the creation of the dangerous state by itself will result in liability for the property owner.

## Liability to Trespassers for Dog Bites



One of the most common examples where strict liability may come into play is in dog bite cases. The laws governing liability for dog bites differ from one state to the next. Most states have either adopted the strict liability theory or the "One Bite Rule."

## The One Bite Rule

When it comes to dog bite injuries, some states allow a dog owner one chance to get their dog under control. As the title suggests, the “one bite rule” allows a dog one “free bite” before the owner will be held liable for a dog bite injury. The exception is when the owner was negligent in controlling the dog. So, for instance, the rules do not apply if another dog law was violated at the time, such as a leash law.



## Liability to Trespasser for Dog Bite



When a trespasser is injured by a dog on someone's property, the owner typically argues that there is no liability for a trespasser's injuries. While this is basically true, there are a few exceptions. For example, if a property owner has become aware that people regularly use their property as a shortcut to a playground or public park. In that situation, if the property owner has a dog, he is responsible for posting a warning sign, even for trespassers, that there is a dangerous condition on that property.

If you have questions regarding liability for trespassers, or any other premises liability issues, call the Cottrell Law Office at (800) 364-8305.

## About the Author



### Wesley A. Cottrell

Wesley A. Cottrell has been successfully practicing law for over 29 years. Born in Springdale, Arkansas and raised in Baxter Springs, Kansas, Wes is licensed to practice law in Arkansas, Kansas, Missouri, and Oklahoma.

Wes earned his B.A. from Pittsburg State University in 1981 and his J.D. from the Washburn University School of Law in Topeka, Kansas in 1985. He was admitted to practice law in Kansas in 1986, in Missouri in 1987, in Arkansas in 1989, and Oklahoma in 1993.

He is licensed to practice law in the United States District Court for the District of Kansas, eastern Arkansas, western Arkansas, and western Missouri. He was Deputy Prosecuting Attorney in Crawford County, Kansas from 1987-1989.

Wes lives in Rogers, Arkansas with his wife, Shelly, and their two daughters, Kennedy and Gabby. He is active in his community, and is regularly asked to teach courses to other attorney on personal injury and workers' compensation litigation.

#### Memberships and Associations:

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