

Public Prescriptive Easement

- Public and private prescriptive easements defined the same way under Algermissen.
- Must show all elements:
 - Use of land must be adverse
 - Open or notorious
 - 10 years w/o interruption

Recreational Easement

- Can you have a public prescriptive easement for recreational purposes?
 - Algermissin: policy and precedent support recreational prescriptive easements. If you want to claim a taking, you'd better be sure to join a government entity, though it may not win anyhow
 - Vigil v. Baltzely, 79 N.M. 659 (1968): there was a private prescriptive easement for hunting, fishing and recreation
 - Some courts (not N.M.) find no public prescriptive easement to gain access to beach

- **16-3-9. Limitation of liability of owners of land used for recreational purposes.**
- No person or corporation, or their successors in interest, who has granted a right-of-way or easement across his land to the energy, minerals and natural resources department for use in the state trails system shall be liable to any user of the trail for injuries suffered on the right-of-way or easement unless the injuries are caused by the willful or wanton misconduct of the grantor.

● **17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.**

- A. Any owner, lessee or person in control of lands who, without charge or other consideration, other than a consideration paid to the landowner by the state, the federal government or any other governmental agency, grants permission to any person or group to use the owner's, lessee's or land controller's lands for the purpose of hunting, fishing, trapping, camping, hiking, sightseeing, the operation of aircraft or any other recreational use does not thereby:

17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions (ct'd):

- (1) extend any assurance that the premises are safe for such purpose;
- (2) assume any duty of care to keep such lands safe for entry or use;
- (3) assume responsibility or liability for any injury or damage to or caused by such person or group; or
- (4) assume any greater responsibility, duty of care or liability to such person or group than if permission had not been granted and the person or group were trespassers.

Exception swallows the rule?

- B. This section shall not limit the liability of any landowner, lessee or person in control of lands that may otherwise exist by law for injuries to any person granted permission to hunt, fish, trap, camp, hike, sightsee, operate aircraft or use the land for recreation in exchange for a consideration, other than a consideration paid to the landowner by the state, the federal government or any other governmental agency.