FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

CONCURRING OPINION BY ACOBA, J.,
WITH WHOM DUFFY, J. JOINS

I concur in the result only on the grounds that (1) Crichfield v. Grand Wailea, 93 Hawai'i 477, 6 P.3d 349 (2000), relied on by the parties on appeal, is inapposite where the liability of an access owner such as Defendant-Appellee Kyo-Ya Company, Ltd. dba Sheraton-Maui Hotel (Sheraton) under Hawai'i Revised Statutes chapter 520, the Hawai'i Recreational Use Statute (HRUS), is involved, (2) the majority's dependence on Hafford v. Great N. Nekoosa Corp., 687 A.2d 967 (Me. 1996), and the recreational use statute of Maine is wrong, and (3) the limited liability granted an access owner must rest on an objective view of the circumstances as to whether a plaintiff such as Plaintiff-Appellant Letizia Thompson (Plaintiff), injured on access land, sought to use or did use adjacent property for a recreational purpose as that purpose is defined in HRS § 520-1 (1993). Thus, in my view, an application of HRS § 520-4(b)(Supp. 2005) of the HRUS which affords limited liability[1] to a landowner

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[1] Hawai'i Revised Statutes (HRS) § 520-4 (Supp. 2005) states as follows:

> **Liability of owner limited.** (a) Except as specifically recognized by or provided in section 520-6, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes does not:
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> (1) Extend any assurance that the premises are safe for any purpose;
>
> (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;

who is legally required or compelled to provide access or a parking lot [collectively, "access"] to enable a person to "reach or use" recreational land,[2] requires a determination from an objective viewpoint of whether the person seeks to engage or did engage in an activity that falls within the definition of a "recreation purpose." See HRS § 520-2 (Supp. 2005).

I.

The parties contend that Crichfield applies directly to this case and that the question for this court is whether Plaintiff had a "commercial purpose" or an "exclusively recreational purpose" when she was injured. The positions of the parties are not surprising inasmuch as this court had held in Crichfield that if land is being used for a "commercial purpose"

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(3) Assume responsibility for, or incur liability for, any injury to person or property caused by an act of omission or commission of such persons; and

(4) Assume responsibility for, or incur liability for, any injury to person or persons who enter the premises in response to an injured recreational use.

(b) An owner of land who is required or compelled to provide access or parking for such access through or across the owner's property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for recreation purposes, or as part of a habitat conservation plan, or safe harbor agreement, shall be afforded the same protection as to such access, including parking for such access, as an owner of land who invites or permits any person to use that owner's property for recreational purposes under subsection (a).

[2] "Land," as defined in HRS 520-2 "means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government." (Emphasis added.)

at the time of a plaintiff's injury, the HRUS would not afford a defense. 93 Hawai'i at 489, 6 P.3d at 361. Alternatively, according to Crichfield, if a plaintiff is present on the land with an "exclusively recreational purpose," HRUS would be available as a defense to the claim. Id.

In determining whether a purpose is "exclusively recreational," this court proposed looking at both the intent of the landowner and the user's subjective intent for his or her presence on the land. Citing Crichfield, the majority states that "'the subjective intent of an owner is obviously relevant to whether he or she has directly or indirectly invited or permitted an injured party to use the land without charge for a recreational purpose' . . . [and] that the entrant's subjective intent is also material." Majority op. at 11; see 93 Hawai'i at 487-88, 6 P.3d at 359-60 (determining that there was a question of fact as to whether the injured party and her husband were on the hotel grounds for a commercial purpose, patronizing the hotel café, or were there for purely recreational purposes such as viewing the hotel grounds).

Here, applying the Crichfield analysis, there plainly was not an "exclusively recreational purpose" in Plaintiff's subjective intent. 93 Hawai'i at 489, 6 P.3d at 361 (emphasis added). As the majority states, the incident occurred when

Plaintiff, "a certified scuba instructor working as an independent contractor for Pacific Dive, a business located in Lahaina, led three students on a nighttime dive near the Sheraton at a location known as Black Rock." Majority opinion at 2. It appears fairly clear that Plaintiff was a part of a commercial enterprise, was paid for her instruction, and was engaged in an activity that contributed to her livelihood. Thus, under the Crichfield test her subjective intent was not to engage in an "exclusively recreational purpose" and her claim would be precluded under the HRUS.

As mentioned above, Crichfield also states that "the subjective intent of an 'owner' of 'land' is obviously relevant to whether he or she has directly or indirectly invited or permitted an injured party to 'use' the 'land' . . . for a 'recreational purpose.'" 93 Hawai'i at 487, 6 P.3d at 359. However, Crichfield is not relevant in this case insofar as it focuses on the intent of the landowner. For the landowner's intent is irrelevant where the landowner is "required or compelled" to provide access in order to allow ingress and egress to recreational land. See HRS § 520-4(b). Hence, the owner's subjective intent as to the "use" of his property is simply not pertinent. There is no question in this case that Sheraton was required to provide beach access and free parking. As the

majority states, "the Sheraton was required to provide beach access and free parking as part of the requirements for obtaining its state and county building and use permits." Majority opinion at 7 n.3. Therefore, Crichfield is inapposite if the subjective intent criterion is applied.

II.

The parties rely on Crichfield as this court's last pronouncement on HRS chapter 520. The majority perceives that "[a]n ambiguity exists in the present matter as to whether an activity . . . can be transformed from a recreational use into a non-recreational one solely by virtue of the plaintiff's subjective reasons for engaging in the activity." Majority opinion at 14. The majority asserts that this court should

> approach the analysis of whether a HRUS defense is available to the Sheraton in the present matter by seeking an outcome that . . . "promot[es] the use and enjoyment of Hawai'i's resources" by "encourag[ing] wider access to lands and waters for . . . fishing and other activities," while respecting traditional duties owed by landowners to non-recreational entrants.

Majority opinion at 16-17 (emphasis added).

However, as noted supra, Sheraton did not provide public access to the ocean because of the perceived benefits of HRUS. It "was required to [do so] . . . as part of the requirements for obtaining its state and county building and use permits." Majority opinion at 7 n.3. Thus, the majority's stated purpose of "encourag[ing] wider access to land and

waters," majority opinion at 16, is not germane. An owner that is required or compelled to provide access cannot be said to be susceptible to entreaties to do an act it is already legally compelled to perform.

Furthermore, Hafford, which the majority finds "persuasive," majority opinion at 20, and the Maine statute involved,[3] are not relevant models upon which to base our

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[3] 14 Maine Revised Statutes Annotated (MRSA) tit. 14, § 159-A states in pertinent part as follows:

> **1. Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings:
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> **A.** "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted.
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> **B.** "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting.
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> **C.** "Occupant" includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use.
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> **2. Limited duty.** An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee,

interpretation of HRS § 520-4(b).

First, it should be noted that Maine Revised Statutes Annotated (MRSA) tit. 14 § 159-A is far broader in scope than HRS § 520-4. Whereas HRS § 520-4(a) extends immunity only to an owner who "directly or indirectly invites or permits . . . any person to use the property," MRSA § 159-A excludes "[a]n owner, lessee, manager, holder of an easement or occupant of premises," from "a duty of care" "regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities [(recreational activity)] on the premises." (Emphases added.) Under the Maine statute "premises" is not limited to "access or parking," HRS § 520-4(b), but includes "improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters . . . adjacent to those lands," MRSA 159-A(1)(A), without regard to authorization by way of "state or county land use, zoning, or planning law, ordinance, rule, ruling, or order[,]" HRS § 520-4(b). Furthermore, "encouraging wider access," majority opinion at 16, through recreational land owner "invit[ation] or perm[ission]," HRS § 520-4(a), plays no

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manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

(Emphases added.)

part at all in the Maine law inasmuch as the statute itself flatly authorizes the use of "premises." Accordingly, Maine has determined that limitation of liability under this section provides no basis for distinguishing between commercial and noncommercial premises. See Stanley v. Tilcon Maine, Inc., 541 A.2d 951, 953 (Me. 1988).

But most significantly, none of the analysis as to recreational use engaged in by the majority is relevant, for the Maine statute itself equates "passage over premises," i.e., access, in order to pursue "recreational or harvesting activities" as a recreational activity itself. See supra note 3 (stating that "'[r]ecreational or harvesting activities' means recreational activities conducted out-of-doors, [and] . . . includes entry of . . . premises" (quoting MRSA § 159-A(1)(B)). Thus, it was entirely predictable, as the Maine court concluded, "that Hafford's travel over Great Northern's land was an action in pursuit of the use of property for recreation even though Hafford was paid by his customers to provide transportation," inasmuch as "the statute defines 'recreational activity' as '. . . includ[ing] entry, use of and passage over premises in order to pursue these activities'" (emphasis added) and the Maine court "construe[s] the immunity provision of section 159-A broadly." Hafford, 687 A.2d at 969 (citations ommitted).

In contrast, under HRS § 520-4(b), access itself is not a designated recreational activity, and could only commonsensically be rendered so by express legislative direction -- a course the Hawai'i legislature obviously did not choose. Under Hawaii's legislative history, immunity attaches to HRS § 520-4(b) owners because the law mandates provision of the access, and not because entry onto land is defined under the statute as synonymous with a recreational activity such as swimming. See discussion infra.

Second, Maine courts have held that their recreational use statute is to be liberally construed in favor of landowners. The Maine Supreme Court broadly construes the statutory provision granting property owners immunity from liability for failing to keep premises safe for use for recreational activities. See Hafford, 687 A.2d at 969 (stating that "[w]e construe the immunity provision of section 159-A broadly"). In view of the fact that the immunity provision of the statute limiting liability for recreational or harvesting activities was to be construed broadly, an exception to the provision would be construed narrowly. See Robbins v. Great Northern Paper Co., 557 A.2d 614, 616 (Me. 1989)(stating that, "[b]ecause we construe the immunity provision of section 159-A broadly, we interpret the . . . exception narrowly" (citations omitted)).

The opposite is true, however, under HRUS. By the express terms of the statute, "encouragement," as wrought by the legislature is in the form of the limited liability afforded landowners who chose to invite or permit users onto its land. See HRS § 520-1 (stating, "[t]he purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability towards persons entering thereon for such purposes[]" (emphasis added)). Accordingly this court (at least in the past), as have most courts, deigned to afford a liberal construction in favor of the landowner.[4] In Crichfield, moreover, this court seemingly rejected a construction given HRS Chapter 520 by the Ninth Circuit favoring the landowner. 93 Hawai'i at 486-87, 6 P.3d at 358-59. It was stated that, "[w]ere we to apply the Howard rule that a plaintiff's subjective intent is

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[4] Courts in other states have refused to adopt a policy of liberally construing recreational use statutes in favor of the landowner. See Matthews v. Elk Pioneer Days, 824 P.2d 541, 543 (Wash. App. 1992) (noting that the Wisconsin statute differs significantly from Washington's recreational use statute in that Washington does not provide for a policy of liberal construction in favor of the landowner); see also Smith v. Arizona Bd. of Regents, 986 P.2d 247 (Ariz. 1999) (distinguishing Wisconsin's statute from that of Arizona's in that Wisconsin's statue is "liberally construed in favor of property owners to protect them from liability." (emphasis added)); Monteville v. Terrebonne Parish Consol. Gov't, 567 So.2d 1097 (La. 1990) (finding that "the great majority of courts in other states (states other than Wisconsin) interpreting recreational use statutes have held that because the statutes are in derogation of the common law and because they limit the duties of landowners in the face of a general expansion of premises liability principles, they must be strictly construed []" (citing Boileau v. DeCecco, 310 A.2d 497 (N.J. 1973) (emphasis added)).

immaterial to whether HRUS applies to immunize a landowner, then the Crichfields' allegedly 'commercial' purpose underlying their presence at the hotel would not defeat the application of HRUS." Id. (citing Howard v. U.S., 181 F.3d 1064, 1073 (9th Cir. 1999)). In adopting Hafford and its internal construction of the Maine statute, the majority imposes Maine's interpretation of its dissimilar statute upon Hawaii's more balanced statutory provisions -- thus effecting a judicial amendment of the HRUS.

III.

A different and more straightforward analysis is suited to HRS § 520-4(b). By its plain language, HRS § 520-4(a) limits the liability of a landowner who "invites or permits without charge any person to use the property for recreational purposes":

> (a) Except as specifically recognized by or provided in section 520-6, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for recreational purposes does not:
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> (1) Extend any assurance that the premises are safe for any purpose;
>
> (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
>
> (3) Assume responsibility for, or incur liability for, any injury to person or property caused by an act of omission or commission of such persons; and
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> (4) Assume responsibility for, or incur liability for, any injury to person or persons who enter the premises in response to an injured recreational user.

(Emphases added.)

On the other hand, HRS § 520-4(b) extends to a landowner who is legally "required or compelled to provide access or parking . . . to reach property used for recreation purposes" the same limited liability protection as a landowner under HRS § 520-4(a), as discussed supra:

> (b) An owner of land who is required or compelled to provide access or parking for such access through or across the owner's property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for recreation purposes, or as part of a habitat conservation plan, or safe harbor agreement, shall be afforded the same protection as to such access, including parking for such access, as an owner of land who invites or permits any person to use that owner's property for recreational purposes under subsection (a).

(Emphases added.) Therefore, HRS § 520-4(b), by its express terms, imputes the limited liability afforded to a landowner who "invites or permits without charge any person to use the property for recreational purposes" to a landowner who is "required or compelled to provide access or parking . . . through or across the owner's property . . . to reach property used for recreational purposes[.]"

The legislative history of HRS § 520-4(b), however, indicates that different considerations motivated the legislature in enacting HRS § 520-4(b), affording immunity to an access landowner, as opposed to a 520-4(a), immunizing landowners that "invite or permit" others to use their land for recreational purposes. The legislature said that "in light of the United

States Supreme Court cases of Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994), the issue of takings may arise when a government mandates public access over private property." Sen. Stand. Comm. Rep. No. 1648, in 1996 Senate Journal, at 837 (emphasis added). Accordingly, there was concern that "if the government mandates access and subsequently prohibits a landowner from protecting itself from tort liability by way of a waiver, this may exacerbate the current situation and further preclude the provision of public access to recreational areas by private landowners." Id.

IV.

Within the framework of HRS § 520-4(b), then, the mandated access is for the accommodation of persons entering or using "property used for recreational purposes." Unlike Maine's statute, under HRS 520-2 a recreational user "means any person who is on or about the premises that the owner of land either directly or indirectly invites or permits, . . . onto the property for recreational purposes." HRS § 520-2. Hence in Hawai'i, unlike Maine, a user must be a person who is on the recreational premises because of an invitation or the permission of the owner.

Unlike the owner of recreational land, the access owner

does not choose to "invite[] or permit[] any person," HRS § 520-4(a), to use its property for recreational purposes. Also unlike the owner of recreational property, the access owner has no control over the status of persons engaging in recreational activity on the land served by the access. See Crichfield, 93 Hawai'i at 488, 6 P.3d at 360 (noting that the legislative history indicates that the purpose of the HRUS was "to limit the liability of landowners who permit persons to use their property for recreational purposes without charge[,]" and that it would "not affect the landowners' common law duty of care towards house guests, business invitees, playmates of his [or her] children[]" (emphasis added) (citation omitted)). Thus, the access owner's immunity stems from utilization of the access for the purpose of reaching[5] the adjacent property for a recreational purpose. Hence, if a plaintiff is engaged in a recreational activity on adjacent recreational property, then the access owner, as exemplified in the express language of HRS § 520-4(b) and its legislative history, should be immune to the extent set forth in HRS § 520-4(a). In applying HRS § 520-4(b), the focus, then,

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[5] Even if HRS § 520-4(b) does not refer to the use of the path for returning from the recreational land, as occurred in this case, to decide otherwise would impose an absurd construction on HRS § 520-4(b). See Bowers v. Alamo Rent-A-Car, Inc., 88 Hawai'i 274, 277, 965 P.2d 1274, 1277 (1998) (stating that "[t]he legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction[,] and illogicality" (internal quotation marks and citation omitted) (brackets in original)).

should be on whether, viewing the circumstances objectively, the user sought to use or did use the adjacent land for a "recreation[al] purpose," i.e., a specific activity as defined in HRS § 520-2.

V.

In that regard and contrary to the majority's assertion that resorting to the plain language of HRS § 520 is "of limited value," majority opinion at 10, the import of the phrase "property used for recreation purposes" is quite clear. Property is not defined in the statute. However, giving "property" its ordinary meaning, see HRS § 1-14 (stating that "words of law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning"), the term is defined as "[a]ny external thing over which the rights of possession, use, and enjoyment are exercised," Black's Law Dictionary 1252 (8th ed. 1999). The adjacent property served by Sheraton's access property here was the ocean where the scuba diving took place. The government is the owner of the ocean. Although the HRUS does not extend immunity to the government for injuries occurring in the ocean, see supra note 2; see also, Lansdell v. County of Kaua'i, 110 Hawai'i 189, 195, 130 P.3d 1054, 1060 (2006)

(concluding that under its provisions HRS chapter 520 does not apply to "land" owned by the government, ocean waters constitute lands owned by the government; accordingly Hawaii's recreational user statute does not extend immunity to the government if the injury occurred in the ocean) in light of the ordinary meaning of the term "property" in HRS § 520-4(b), see supra, the ocean would be included, even if not privately owned, inasmuch as in the absence of other facts, use of property, insofar as the access owner is concerned, is all that is required.

HRS § 520-2 also defines "Recreational purpose," 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." Because the statute enumerates activities within the scope of the general reference to "recreational purpose," it is easily discerned that scuba diving is similar in nature to such water sports as swimming, fishing or boating. The "term 'includes' is ordinarily a term of enlargement, not of limitation; a statutory definition of thing as 'including' certain things does not necessarily impose a meaning limited to inclusion." Schwab v. Ariyoshi, 58 Haw. 25, 35, 564 P.2d 135, 141 (1977) (citations omitted); see

also In re Waikoloa Sanitary Sewer Co., Inc., 109 Hawai'i 263, 274, 125 P.3d 484, 495 (2006) (stating that "[t]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principal[]" (quoting Fed. Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95, 99-100 (1941))).

Given its ordinary meaning, "scuba diving" is "the activity or recreation of diving or exploring underwater through use of a scuba device." Dictionary.com Unabridged (v 1.0.1), based on the Random House Unabridged Dictionary, © Random House, Inc. 2006. "Scuba" is "an apparatus used for breathing while swimming under water[.]" Webster's Third New Int'l Dictionary 2043 (1961). Scuba diving, then, involves swimming underwater with scuba gear. Because the activity engaged in here is akin to swimming, it fits within the definition of "recreation[al] purpose." Furthermore, Plaintiff concedes that "scuba diving can be recreational and is similar to other 'recreational' activities listed in [HRS § 520-2], e.g., fishing, swimming and water skiing." Majority opinion at 8 n.4.

With all due respect the majority's view that "where the plaintiff's presence on the land is closely associated with the presence of individuals whose purpose on the land is purely recreational, the recreational purpose attaches to the

plaintiff[,]" majority opinion at 20 (emphasis added), is not helpful. "Closely associated" is an ambiguous criterion that will engender disparate and conflicting results rather than establish a clear and uniform rule and seems fashioned to fit the result obtained in this case. Rather, based on the defined terms in the HRUS itself, the disposition of a plaintiff's claim for injury suffered on the access should depend on whether the plaintiff was "on or about the premises" of the recreational landowner "for recreational purposes." Inasmuch as recreational purpose is defined in the statute itself, "recreational user" needs no further explication: if Plaintiff was engaged in an activity encompassed within the term recreational purpose, she was a recreational user. In this case, then, it is irrelevant that Plaintiff was an instructor, inasmuch as at the least she engaged in an activity, i.e., scuba diving, encompassed within the "recreational purpose[6]" definition. The same would apply to the majority's reference to "a member of the group paid to guide or instruct others," majority opinion at 20, assumably a "member" of the group that was engaged in scuba diving -- whether instructor or student -- would still be partaking in the scuba-diving activity.

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[6] The term "purpose" itself includes "an object, effect, or result aimed at, intended, or attained." Webster's Third New Int'l Dictionary 1847 (1961).

Based on HRS § 520-4(b), then, the relevant question should be whether from an objective viewpoint, it can be concluded that Plaintiff used Sheraton's beach-access path in order to engage in a "recreation purpose," i.e., a HRS § 520-2 defined activity, on the property served by the path, here the adjacent beach and ocean. HRS § 520-2; see Linville v. City of Janesville, 497 N.W.2d 465, 469 (Wis. App. 1993) (stating that "we apply an objective test to the undisputed facts to determine whether an injured person was engaged in a 'recreational activity,'" a test which "requires examination of all aspects of the activity[]" (citation ommitted)); see also Ianotti v. Consolidated Rail Corp., 544 N.Y.S.2d 308, 312 (N.Y. 1989) (noting that "[t]here is nothing in the statute (New York's recreational use statute) or its history suggesting that the Legislature intended its application should turn on the subjective intent of the injured person when engaging in one of the enumerated activities[]"); cf. Doe Parents No. 1 v. State, Dept. of Educ., 100 Hawai'i 34, 69, 58 P.3d 545, 580 (2002) (noting that this court adopted an objective standard in holding that "serious mental distress may be found where a reasonable [person], normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case" (emphasis added) (internal quotation marks and citation

omitted)); Rodrigues v. State, 52 Haw. 156, 173, 472 P.2d 509, 520 (1970) (adopting an objective standard in holding that "serious mental distress may be found where a reasonable [person], normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case" (emphasis added)).

In sum, Plaintiff used Sheraton's beach-access path to reach the ocean where she led three students on a nighttime scuba dive. Scuba diving is a "recreational purpose" under HRS § 520-2 as it is encompassed within the activity of swimming, an enumerated "recreational purpose" under HRS § 520-2. Because the activity, i.e., scuba diving, for which the property, i.e., the ocean, was "reached or used" falls within the definition of a "recreational purpose," the HRUS applies and Sheraton, pursuant to HRS § 520-4(b), is afforded limited immunity under HRS § 520-4(a). Therefore, Sheraton is immunized from Plaintiff's negligence suit.