

Citizen Science Q&A: Tort Claims Against Citizen Scientists, Academic Scientists, and Universities (Massachusetts and North Carolina)

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Through the Citizen Science Association Law & Policy Working Group, the Emmett Environmental Law & Policy Clinic at Harvard Law School has volunteered to make its students available to answer questions about relevant laws and policies raised by citizen science projects. The questions below were submitted through the working group's [question submission form](#).

The answers below are provided for educational purposes only. Clinic students are not practicing attorneys. By answering questions, Clinic students are not providing legal advice, acting as your attorney, or serving as a substitute for the advice of an attorney. Their answers to submitted questions do not create an attorney-client relationship or a commitment to answer additional questions. Communications between individuals using the question submission form and the Clinic's students are not protected by the attorney-client privilege or work product doctrine. Readers should contact their attorney to obtain advice with respect to any particular legal matter.

Question 1: In Massachusetts could a citizen scientist, or the academic scientist or university overseeing the project, be held liable for negligently harming a third party or damaging a third party's property in the course of data gathering?

In the course of gathering data, citizen scientists may accidentally injure someone or damage someone's property. For example, a citizen scientist could inadvertently crash a drone, causing damage to personal or real property or injuring bystanders. Under Massachusetts law, the owner of the damaged property or injured victim may bring a civil tort action to recover damages and economic losses in certain circumstances. However, statutory protections and insurance policies may provide qualified immunity and financial assistance for volunteers, academic scientists, and universities.

A. *Liability of Citizen Scientists*

Generally, citizen scientists can be held liable if they cause property damage and personal injury intentionally or through a negligent act.

Personal Property Damage—An individual can be held liable for harming or breaking an object owned by another person. In tort law, personal property damage is often referred to as trespass to chattels. According to the Massachusetts courts, recovery or relief for trespass or injury to a chattel is generally only available when the plaintiff is able to establish that the property has been physically harmed.¹ In addition, trespass to chattels requires an *intent* to use or intermeddle with the property; “[t]he mere fact that the actor has used or otherwise intermeddled with another’s chattel in a manner which substantially affects its condition, quality or value or which deprives the possessor of use for an appreciable time does not make the actor liable[.]”² Indeed, an individual who hits or falls into personal property inadvertently will most likely not be held liable for trespass.³ But a person who deliberately tinkers with a third party’s personal property and thereby accidentally or negligently harms it may be subject to liability for the resulting damage.⁴

Real Property Damage—An individual may be liable for negligently harming someone else’s real property, *i.e.*, immovable property such as land or buildings, if the person knows or has reason to know that the activity she is engaging in is reasonably likely to result in such harm.⁵ “In general, a party who suffers injury that is proximately caused by the negligence of another is entitled to be fairly compensated by the tortfeasor for his or her loss; this principle underlies the rules for recovery of negligent damage to real property.”⁶ While there is no specific formula for damages to real property, appropriate relief is generally the cost of repair or the diminution in property value, *i.e.*, the difference between the fair market value of the property prior to the loss and its fair market value after the loss.⁷

Personal Injury—An individual can also be liable for negligently injuring a third party. In order to establish negligence, the plaintiff must prove that:

- a. the defendant owed the plaintiff a duty of reasonable care;
- b. that the defendant breached this duty;
- c. that damage resulted; and
- d. that there was a causal relation between the breach of the duty and the damage.⁸

“[A] defendant owes a duty of care to all persons who are foreseeably endangered by his conduct, with respect to all risks which make the conduct unreasonably dangerous.”⁹ Damages from a negligence case for personal injury may include both physical (*e.g.*, pain and suffering and emotional distress) and economic (*e.g.*, medical bills and lost wages) losses.

B. Liability of Academic Scientists and Universities

If someone negligently causes personal injury or property damage, someone else may be vicariously liable for the harm if that other person has control or apparent control over the conduct of the negligent party.¹⁰ In the context of an employer-employee relationship, the employer is liable for the tortious acts of an employee that are committed within the scope of employment.¹¹

Vicarious liability is not generally imposed in the context of a volunteer relationship as volunteers are not considered employees; they are not “in any legal sense, the servants of the company.”¹² Rather, a volunteer is defined as “one who intrudes himself into matters which do not concern him, or does or undertakes to do something which he is not legally nor morally bound to do, and which is not in pursuance or protection of any interest.”¹³

Importantly, however, a university can be liable for a volunteer’s tortious acts and have a duty to protect a volunteer from injury if it invites the volunteer to aid an employee in their job, or has expressly or implicitly authorized an employee to seek the assistance of volunteers in completing their duties.¹⁴ In this case, the university could protect itself against liability by requiring that all citizen scientist volunteers release the institution from liability (*See University Liability Release Forms* below).

C. Forms of Protection from Liability

In Massachusetts, multiple forms of protection from liability may exist for both supervising entities, such as universities and academic researchers, as well as volunteer citizen scientists.

Immunity for Public Employees—Under the Massachusetts Torts Claim Act (MTCA), a public employee will not be held liable for their negligent or wrongful acts or omissions while acting within the scope of their office or employment.¹⁵ Rather, *public employers*, such as state universities, will

be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual under like circumstances, except that public employers shall not be liable to levy of execution on any real and personal property to satisfy judgment, and shall not be liable for interest prior to judgment or for punitive damages or for any amount in excess of \$100,000.¹⁶

Per the above, although state universities can be liable for the negligent conduct of their employees, any judgment for punitive damages is capped at \$100,000. Compensatory damages face no such cap, however.

Insurance for Universities and University Students & Employees—In general, most Massachusetts universities have some form of insurance to protect themselves from any potential liability and associated costs (*e.g.*, attorney’s fees) arising out of their staff’s or students’ negligent actions committed within the scope of their employment or studies, respectively. But these insurance policies appear limited to the actions of *employees* and *students*, and would likely not extend to citizen scientist volunteers from outside the university community.

Table 1: Examples of Massachusetts University Insurance Policies

School	Insurance Policy
Harvard University	The Commercial General Liability (CGL) Policy provides coverage for the University, its directors, officers, faculty and staff when acting within their duties as such. It covers claims arising from negligent acts and/or omissions resulting in bodily injury and/or property damage on the University’s premises, when someone is injured in the general course of University operations away from campus, or as the result of a product or service manufactured, distributed or provided by the University. ¹⁷
Massachusetts Institute of Technology	General Liability insurance provides coverage for the Institute, its directors, officers, faculty, and staff when acting within their duties as such. It covers claims/suits brought by a third party arising from

	negligent acts and/or omissions resulting in property damage, bodily injury, or personal injury for which they are legally liable. ¹⁸
Northeastern University	All students on clinicals, practicum, or internships must register each semester to be covered by Northeastern University’s liability insurance, for which students pay an annual fee. This insurance covers injury to third parties by students who are doing work or completing professional studies outside of Northeastern University’s premises. These activities must clearly be part of the student’s assigned duties. The liability insurance does not cover willful misconduct. ¹⁹ * <i>Note this is directed specifically towards student activities.</i>

University Liability Release Forms—Universities may additionally protect themselves from liability regarding the negligence of any citizen scientist volunteer or injuries suffered by any such volunteer by requiring participants to sign a release or waiver. The appendix contains examples of these contracts which universities may use to limit their liability with volunteers or individuals undertaking projects occurring off-campus.

Volunteer Protection Act—As noted above, university insurance policies will likely only extend to employees of the university, and not to work done by outside volunteers. However, Massachusetts courts recognize the federal **Volunteer Protection Act (VPA) of 1997**, 42 U.S.C. § 14503 *et seq.*, which covers liability protection for volunteers as it preempts inconsistent state laws, except where such laws provide additional protections for volunteers.²⁰

The VPA provides that, subject to certain exceptions, no volunteer of a nonprofit organization or governmental entity will be held liable for harm caused by an act or omission of the volunteer if—

- a. the volunteer was acting within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
- b. if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity;
- c. the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and
- d. the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

- i. possess an operator's license; or
- ii. maintain insurance.²¹

The statute further defines a covered volunteer as “an individual performing services for a nonprofit organization or a governmental entity who does not receive” compensation (other than reasonable reimbursements) or “any other thing of value in lieu of compensation, in excess of \$500 per year.”²² Accordingly, the VPA may provide qualified immunity to volunteer citizen scientists against ordinary negligence claims *so long as their work is within the scope of their responsibilities for a nonprofit organization and they are not receiving compensation.*

Partnering with nonprofits, such as environmental organizations and public universities, may therefore limit a volunteer citizen scientist's liability. In this situation, citizen scientists may also want to inquire into the nonprofit organization's insurance.

Question 2: In North Carolina could a citizen scientist, or the academic scientist or university overseeing the project, be held liable for negligently harming a third party or a damaging a third party's property in the course of data gathering?

As under Massachusetts law, citizen scientists may accidentally injure someone or damage someone's property during the course of gathering data, thereby subjecting not only themselves but also potentially their supervisors or organizations to liability. Nevertheless, statutory protections and insurance policies may provide qualified immunity and financial assistance for volunteers, academic scientists, and universities.

A. *Liability of Citizen Scientists*

Under common law and state tort law, a person may be liable for the harm they negligently cause to another or another's property.

Personal Property Damage—The essential elements of trespass to chattel or personal property are:

- a. that at the time of the alleged trespass, the plaintiff was in actual or constructive possession of the personal property; and
- b. that without justification, authority or lawful excuse, the defendant interfered with the plaintiff's possession of the personal property.²³

North Carolina, like Massachusetts, requires that the defendant *intentionally* dispossess the plaintiff of the chattel or otherwise *intentionally* intermeddle with the plaintiff's personal property without permission.²⁴ Accordingly, someone who inadvertently breaks another's personal property without even the intent to touch the object will likely not be found liable for resulting damages.

Real Property Damage—In North Carolina, in order to successfully claim trespass to real property, the plaintiff must establish that:

- a. the plaintiff was in possession of real property at the time of trespass;
- b. the defendant, without authorization, unlawfully entered such real property; and
- c. the plaintiff sustained damage as a result of the unlawful entry.²⁵

While a plaintiff may bring a trespass claim against a defendant if they enter the property negligently (*i.e.*, a prudent person would have otherwise known that such entry was unlawful), “in the absence of negligence, trespass to land requires that a defendant intentionally enter onto the plaintiff’s land.”²⁶ Moreover, a showing of intentional entry is sufficient; the plaintiff need not prove that the defendant intended to cause the damage to the real property.²⁷

Generally, the appropriate relief for injury to real property (whether negligent or intentional) will be the diminution in value to the property, *i.e.*, the difference between the market value of the property before and after the injury.²⁸ While in certain circumstances replacement and repair costs may also be an acceptable form of damages, diminution in property value is appropriate where “the cost of remediation to the real property is disproportionate to or greatly exceeds the diminution in value of the property or is otherwise unreasonable under the circumstances[.]”²⁹

Personal Injury—Individuals can be held liable for negligently causing personal injuries that can and should have been foreseen. The law of negligence does not require that the defendant *know* the future; rather,

[t]he law only requires reasonable foresight, and when the injury complained of is not reasonably foreseeable, in the exercise of due care, the party whose conduct is under investigation is not answerable therefor. Foreseeable injury is a requisite of proximate cause, and proximate cause is a requisite for actionable negligence, and actionable negligence is a requisite for recovery in an action for personal injury negligently inflicted.³⁰

Accordingly, as long as the plaintiff’s personal injuries were a reasonably foreseeable result of the defendant’s actions or omissions, and the defendant’s actions or omissions were causally connected to the plaintiff’s personal injuries, the defendant can be found liable.

B. Liability of Academic Scientists and Universities

In North Carolina, under the doctrine of *respondeat superior*, an academic scientist and/or university can be liable for the negligent actions or omissions of those over whom they have “retained the right of control or superintendence.”³¹ While universities may thus be liable for the negligence of their agents or employees, they will generally not be held liable for the negligent actions of volunteers or for injuries to such volunteers. A volunteer who assists an academic researcher “at the latter’s request does not, as a general rule, become a servant of the [employer University] so as to impose upon the latter, the duties and liabilities of a master towards such volunteer, or so as to render the master liable to third persons injured by such volunteer’s acts or negligence, while rendering such assistance.”³²

A university can, however, owe a duty to protect volunteers and be liable for the negligent actions of a such volunteers to third parties where its employee, *i.e.*, the academic researcher, has

express or implicit authority to employ such assistance.³³ The university may thus require that volunteers, prior to performing their work, release the institution from liability.

C. Forms of Protection from Liability

In North Carolina, multiple forms of protection from liability may exist for both supervising entities, such as universities and academic researchers, as well as volunteer citizen scientists.

Immunity for Public Employees—Under the North Carolina Torts Claim Act, a public employer can be liable for the negligent actions or omissions of a public employee acting within the scope of their employment. The state has waived its governmental immunity for tort claims against public employees of “the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State.”³⁴ However, all claims must be brought to the Industrial Commission, which retains exclusive and original jurisdiction of all tort claims against the state and state actors.³⁵

Under the Torts Claim Act, a state agency, such as the University of North Carolina, will be liable for the first \$150,000 of a judgment in damages, and the state will cover the remaining balance up to \$1,000,000 unless it determines in its discretion that the agency liable for the claim has the resources to pay for the full claim.³⁶ Moreover, the state agency will cover the full claim if it has purchased commercial insurance in an amount at least equal to the limits of the Torts Claim Act.³⁷ Therefore, state entities, such as University of North Carolina, may be held liable for any negligence claims brought against its employees, either up to the amount of \$150,000 or its policy amount, whichever is higher.

Insurance for Universities and University Employees—In general, most North Carolina universities have some form of insurance to protect themselves from any potential liability and associated costs (e.g., attorney’s fees) arising out of their staff’s negligent actions committed within the scope of their employment.

Table 2: Example of a North Carolina University Insurance Policy

School	Insurance Policy
Duke University	General Liability Insurance is a self-insured program that provides coverage for property damage, bodily injury, or personal injury to a third party for which the University is legally liable. Coverage is provided to University trustees, officers, and employees for their legal liability for actions within the scope of their duties. ³⁸

University Liability Release Forms—Universities may additionally protect themselves from liability regarding the negligence of any citizen scientist volunteer or injuries suffered by any such volunteer by requiring participants to sign a release or waiver. For example, under the University of North Carolina’s Unpaid Volunteers and Interns Policy, any unpaid volunteer must have advance approval of the sponsoring Department and the Office of Human Resources using

the Unpaid Volunteer, Intern and Visiting Scholar Form.³⁹ This form waives any liability of the University for injuries, compensation, or property damage that may result from the volunteer's services. A volunteer is defined, as per the University's policies, as an individual who "offer[s] their services without cost to the University for civic reasons and which are not typically performed by permanent University employees."⁴⁰ Examples of volunteers include an individual performing duties that are beneficial to the University's "research and/or public service mission."⁴¹ Consequently, a citizen scientist would likely have to sign this form and release any future liability against the University as a result of the volunteer's conduct.

The appendix contains examples of these contracts.

Federal & State Volunteer Protection Acts—The federal **Volunteer Protection Act**, as discussed above for Massachusetts, may provide a shield from liability for volunteers for ordinary negligence claims.⁴² A similar state statute providing additional protections exists in North Carolina, N.C. Gen. Stat. § 1-539.10, whereby a volunteer who performs services for charitable institutions is not liable for civil damages so long as—

- a. the volunteer was acting in good faith and the services rendered were reasonable under the circumstances;
- b. the volunteer's acts did not amount to gross negligence, wanton conduct, or intentional wrongdoing; and
- c. the acts did not occur while the volunteer was operating a motor vehicle.⁴³

Importantly, however, a volunteer's qualified immunity is waived up to the amount the charitable organization or volunteer has liability insurance.⁴⁴ Moreover, liability may attach despite a volunteer's status if they know or should have known that the work to be performed on behalf of the charitable organization is either ultra-hazardous or inherently dangerous.⁴⁵

A covered "volunteer" is defined as an "individual . . . performing services for a charitable, nonprofit organization" who does not receive compensation, or anything of value in lieu of compensation, other than reimbursed incurred expenses.⁴⁶ A "charitable organization" must have tax exempt status as an organization with humane and philanthropic objectives, such as a Section 501(c)(3) nonprofit.⁴⁷ North Carolina's Qualified Immunity for Volunteers statute may thus apply to volunteer citizen scientists acting under the leadership of a university. For example, the University of North Carolina has tax exempt status as a Section 501(c)(3) organization and would therefore be considered a "charitable organization" for the purposes of the statute.⁴⁸ Additionally, a citizen scientist, assuming they are unpaid, may qualify as a volunteer. Supposing that the citizen scientist volunteer has released the University of North Carolina from liability (*See University Liability Release Forms* above), the volunteer would not be covered by the University's insurance policy and could proffer statutory immunity as a defense.

Partnering with nonprofits, such as environmental organizations and public universities, may therefore limit a volunteer citizen scientist's liability. In this situation, citizen scientists may also want to inquire into the nonprofit organization's insurance.

Appendix

Example Release Form, Massachusetts Institute of Technology:

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY
Liability Release, Waiver, Discharge and Covenant Not to Sue**

This is a legally binding Release, Waiver, Discharge and Covenant Not to Sue (collectively, "Release"), made voluntarily by me, the undersigned Releasor, on my own behalf, and on behalf of my heirs, executors, administrators, legal representatives and assigns (hereinafter collectively, "Releasor," "I" or "me", which terms shall also include Releasor's parents or guardian, if Releasor is under 18 years of age) to the Massachusetts Institute of Technology ("MIT").

As the undersigned Releasor, I fully recognize that there are dangers and risks to which I may be exposed by participating in the program, trip or other activity described as **STATE the ACTIVITY, Trip or event with some specificity, to include date(s)** (the "Activity"). As the undersigned Releasor, I understand that MIT does not require me to participate in this Activity, but I want to do so despite the possible dangers and risks and despite this Release. With informed consent, and for valuable consideration received, including assistance provided by MIT, as the undersigned Releasor, I agree to assume and take on myself all of the risks and responsibilities in any way arising from or associated with this Activity, and I release MIT and all of its affiliates, divisions, departments and other units, committees and groups, and its and their respective governing boards, officers, directors, principals, trustees, legal representatives, members, owners, employees, volunteers, agents, administrators, assigns, and contractors (collectively "Releasees"), from any and all claims, demands, suits, judgments, damages, actions and liabilities of every name and nature whatsoever, whenever occurring, whether known or unknown, contingent or fixed, at law or in equity, that I may suffer at any time arising from or in connection with the Activity, including any injury or harm to me, my death, or damage to my property (collectively "Liabilities"), unless caused by the reckless endangerment or willful misconduct of Releasees, and I agree to defend, indemnify, and save Releasees harmless from and against any and all Liabilities.

As the undersigned Releasor, I recognize that this Release means I am giving up, among other things, all rights to sue Releasees for injuries, damages or losses I may incur. I also understand that this Release binds my heirs, executors, administrators, legal representatives and assigns, as well as myself. I also affirm that I have adequate medical or health insurance to cover any medical assistance I may require.

I agree that this Release shall be governed for all purposes by Massachusetts law, without regard to such law on choice of law.

I have read this entire Release. I fully understand the entire Release and acknowledge that I have had the opportunity to review this Release with an attorney of my choosing if I so desire, and I agree to be legally bound by the Release.

THIS IS A RELEASE OF YOUR RIGHTS, READ CAREFULLY AND UNDERSTAND BEFORE SIGNING.

(Releasor's Signature)

(Parent's Signature, if Signatory is minor)

(Print Name)

(Print Name)

(Date)

Example Release Form, University of North Carolina at Chapel Hill:

The University of North Carolina at Chapel Hill
Office of Human Resources – Employment and Staffing Department

RELEASE OF LIABILITY FOR UNPAID VOLUNTEERS AND UNPAID INTERNS		
THIS SECTION: APPOINTING DEPARTMENT USE ONLY		
Volunteer/Intern Name	Proposed Activity: <input type="checkbox"/> Volunteer <input type="checkbox"/> Unpaid Intern	
Department Name		
Department Number	Is Volunteer/Intern under the age of 18? (If yes, parent or guardian must sign below.)	<input type="checkbox"/> YES <input type="checkbox"/> NO
Description of Volunteer's/ Intern's Activity or Service <small>(THIS DESCRIPTION MUST MATCH THAT ON THE VOLUNTEER REQUEST FORM)</small>		

THIS SECTION: VOLUNTEER/UNPAID INTERN USE ONLY

INSTRUCTIONS: UNC-CH's mission involves a variety of teaching, research, and public service activities. As an unpaid volunteer or unpaid intern, you play an important role in supporting our mission while at the same time gaining experience which will be personally rewarding. For insurance and risk management purposes, UNC-CH requires that you carefully read and agree to the following terms. The term "UNC-CH" means The University of North Carolina at Chapel Hill (along with its directors, officers, employees and agents acting within the course and scope of their duties). "I", "Volunteer/Intern" or "me" means you, the intended unpaid volunteer or unpaid intern. We appreciate your interest in serving The University of North Carolina at Chapel Hill and welcome you as a member of our community!

I, Volunteer/Intern, hereby freely, voluntarily and without duress, execute this Release of Liability under the following terms:

1. I am providing service to UNC-CH voluntarily, without pressure of coercion, for educational, civic, charitable or humanitarian reasons and without expectation of payment, reimbursement, or future paid employment of any kind.
2. I understand that UNC-CH will not cover me by any insurance including, but not limited to, medical, property, health, liability insurance or workers' compensation benefits, nor will any financial or other assistance be provided in the event of injury or illness.
3. I agree that my service may be terminated at any time and for any reason by UNC-CH or by me.
4. In consideration of the opportunity to provide unpaid service to UNC-CH, I do hereby release and forever discharge and hold harmless UNC-CH from any and all liability, claims, and demands of whatever kind or nature which arise or may hereafter arise from my service. I understand that this Release discharges UNC-CH from any liability or claim that I may have against it with respect to any bodily injury, personal injury, illness, death, property loss or property damage that may result from my service.
5. I understand and acknowledge that potential risks to my health and personal property may be associated with my service to UNC-CH and I voluntarily assume those risks. I release and forever discharge UNC-CH from any claim whatsoever that arises or may hereafter arise on account of any first aid, treatment or service I receive in connection with my service to UNC-CH.
6. I have consulted with my health care provider regarding my pre-existing health conditions (such as insect, food or medication allergies) and will provide myself with any appropriate medication to treat these health problems. I hereby release and forever discharge UNC-CH from any claim whatsoever arising from any complication or exacerbation of any such health condition.
7. I grant UNC-CH permission to reproduce my name, likeness, identity, voice, image, and oral or recorded statement in any publication or media intended for research, educational, promotional, fundraising or similar purposes without compensation of any kind. I hereby waive and release UNC-CH from any claim or liability relating to any such use.
8. I agree to comply with all UNC-CH policies (e.g., the Patent and Invention, Copyright and Acceptable Use Policies) while using UNC-CH facilities or resources, and I acknowledge that all UNC-CH policies apply to my activities at and service to UNC-CH.
9. This Release of Liability shall be binding and enforceable against me and my successors, assignees, heirs, guardians and legal representatives. I expressly agree that this Release is intended to be as broad and inclusive as permitted by the laws of the State of North Carolina and that this Release shall be governed by and interpreted in accordance with the laws of the State of North Carolina. I agree that, in the event that any clause or provision of this Release shall be held to be invalid, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this Release which shall continue to be enforceable.

I have carefully read this Release. I understand that in signing this document, I am giving up significant legal rights in exchange for being able to serve UNC-CH as an Unpaid Volunteer or Unpaid Intern.

Name of Volunteer/Intern	Signature of Volunteer/Intern	Date
Name of Parent or Guardian <small>(If Volunteer/Intern is under age of 18)</small>	Signature of Parent or Guardian <small>(If Volunteer/Intern is under age of 18)</small>	Date
Name of Volunteer's/Intern's Supervisor	Signature of Volunteer's/Intern's Supervisor	Date

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**** DEPARTMENTS MUST MAINTAIN THIS RELEASE ON FILE FOR THREE (3) YEARS FOLLOWING COMPLETION OF UNPAID ASSIGNMENTS ****

¹ *Smith v. Wright*, No. 12–ADMS–10032, 2013 Mass. App. Div. 24, at *6 (Dist. Ct. 2013) (citing RESTATEMENT (SECOND) OF TORTS §§ 218, 219, 220, comments b, f; *New England Tel. & Tel. Co. v. Nat’l Merch. Corp.*, 141 N.E.2d 702, 706 (Mass. 1957)).

² RESTATEMENT (FIRST) OF TORTS § 218, comments a, b (1934) (October 2019 Update).

³ *See Ryder v. Robinson*, 107 N.E.2d 803, 805 (Mass. 1952) (finding that if the jury “believed that [the child] threw a stone that hit the fence, they could find that hitting the fence was inadvertent and not intentional and so was not a trespass”); *Marengo v. Roy*, 63 N.E.2d 893, 894-95 (1945) (“But this contention is disposed of by the evidence of the declarations of the deceased from which the jury could find that he did not come into contact with the tar kettle intentionally but that he landed upon it unintentionally while trying to jump over it. If the jury believed this, such an unintended and inadvertent contact with the defendants’ personal property was not in itself a trespass upon that property.”).

⁴ RESTATEMENT (FIRST) OF TORTS § 218, comment b.

⁵ *City of Malden v. Breslin*, 609 N.E.2d 498, 500 (Mass. App. Ct. 1993) (finding that a reasonably prudent excavator would know or should have known that its operations could cause a rockfall damaging the plaintiffs’ property).

⁶ *Massachusetts Port Auth. v. Sciaba Const. Corp.*, 766 N.E.2d 118, 123 (Mass. App. Ct. 2002).

⁷ *See id.* at 123-24.

⁸ *See, e.g., Lev v. Beverly Enterprises-Massachusetts, Inc.*, 929 N.E.2d 303, 309 (Mass. 2010).

⁹ *R.L. Currie Corp. v. E. Coast Sand & Gravel, Inc.*, 109 N.E.3d 524, 527 (Mass. App. Ct. 2018).

¹⁰ *See, e.g., Kavanagh v. Trustees of Boston Univ.*, 795 N.E.2d 1170, 1176 (Mass. 2003) (holding that a university’s reference to a student athlete as its “representative” did not subject the university to vicarious liability); *Beauregard v. Peebles*, No. MICV201200570, 2015 WL 506985, at *3 (Mass. Super. Feb. 3, 2015) (holding that under Massachusetts law, vicarious liability may be established where a principal creates an agency relationship by giving someone either actual or apparent authority to act on its behalf).

¹¹ *See, e.g., Keljikian v. Star Brewing Co.*, 20 N.E.2d 465, 466 (Mass. 1939).

¹² *Aldrich v. Bos. & W. R. Co.*, 100 Mass. 31, 33 (1868).

¹³ *Lessard v. Kneeland*, 154 N.E. 94, 95 (Mass. 1926).

¹⁴ *Lawson v. Royal Riding Stables*, 26 N.E.2d 348, 350 (Mass. 1940) (“It is not enough to create such a duty of the master that the third person, of his own volition or at the request of an employee not authorized to ask assistance, is injured while doing work beneficial to the employer. Such a duty does exist if the assistance is given at the request of an employee expressly authorized to ask assistance or if such authority may be implied from the attending circumstances, such as where the assistance is necessary and there are not enough employees at hand to perform the work which must then and there be performed.”); *Murphy v. Barry*, 163 N.E. 159, 160 (Mass. 1928) (finding that no duty to protect from injury “would exist unless the defendants invited the plaintiff to ride on the truck and aid the driver in his collections, or had authorized the driver so to do.”); *Shea v. Gurney*, 39 N.E. 996, 997 (Mass. 1895) (defendants owed a volunteer “no duty except to abstain from injuring him by active misconduct on their part.”).

¹⁵ M.G.L. ch. 258 § 2.

¹⁶ *Id.*; *see also General Liability Information, Human Resources*, U. MASS., <https://www.umassp.edu/hr/risk-management/general-liability-information> (last visited Jan. 24, 2020).

¹⁷ *Commercial General Liability, Risk Management & Audit Services*, HARVARD UNIVERSITY, <https://rmas.fad.harvard.edu/pages/commercial-general-liability> (last visited Jan. 24, 2020).

¹⁸ *General Liability, Office of Insurance*, MASS. INST. OF TECH., <https://insurance.mit.edu/services/insurance-coverage-claims/general-liability> (last visited Jan. 24, 2020).

¹⁹ *Liability Insurance*, NORTHEASTERN UNIVERSITY, <http://catalog.northeastern.edu/graduate/health-sciences/academic-policies-procedures/liability-insurance/> (last visited Jan. 24, 2020).

²⁰ *Lynch v. Crawford*, 135 N.E.3d 1037, 1044 (Mass. 2019) (quoting 42 U.S.C. § 14502(a)).

²¹ 42 U.S.C. § 14502(a) (emphasis added).

²² *Id.* § 14505(6); see also *Manter v. Abdelhad*, 32 Mass. L. Rep. 709 (Mass. Sup. 2014) (applying this act within Massachusetts to church volunteers).

²³ N.C. P.I.-Civil 805.10l; see also *Vaseleniuck Engine Dev., LLC v. Sabertooth Motorcycles, LLC*, 727 S.E.2d 308, 310 (N.C. Ct. App. 2012); *McDowell v. Davis*, 235 S.E.2d 896 (N.C. Ct. App. 1977), overruled on other grounds by, *Johnson v. Ruark Obstetrics and Gynecology Associates, P.A.*, 395 S.E.2d 85 (N.C. 1990).

²⁴ *McDowell*, 235 S.E.2d at 900.

²⁵ *Broughton v. McClatchy Newspapers, Inc.*, 588 S.E.2d 20, 29 (N.C. Ct. App. 2003).

²⁶ *Rainey v. St. Lawrence Homes, Inc.*, 621 S.E.2d 217, 220 (N.C. Ct. App. 2005).

²⁷ See *id.*

²⁸ *Huberth v. Holly*, 462 S.E.2d 239, 243 (N.C. Ct. App. 1995).

²⁹ *BSK Enterprises, Inc. v. Beroth Oil Co.*, 783 S.E.2d 236, 249 (N.C. Ct. App. 2016).

³⁰ *Osborne v. Atl. Ice & Coal Co.*, 177 S.E. 796, 796-97 (N.C. 1935); see also e.g., *Lonon v. Talbert*, 407 S.E.2d 276, 282 (N.C. Ct. App. 1991).

³¹ *Hylton v. Koontz*, 532 S.E.2d 252, 257 (N.C. Ct. App. 2000) (quoting *Hayes v. Elon College*, 29 S.E.2d 137, 140 (N.C. 1944)).

³² *Reaves v. Catawba Mfg. & Elec. Power Co.*, 174 S.E. 413, 415 (N.C. 1934); see also *Lucas v. Li'l Gen. Stores*, 221 S.E.2d 257, 262 (N.C. 1976).

³³ See *id.*

³⁴ N.C. Gen. Stat. § 143-291(a).

³⁵ *Guthrie v. N.C. State Ports Auth.*, 299 S.E.2d 618, 628 (N.C. 1983).

³⁶ N.C. Gen. Stat. §§ 143-291(a1), 143-299.2, 143-299.4; see also e.g., *Liability/Tort, Insurance*, U. NORTH CAROLINA AT CHARLOTTE, <https://rmi.unc.edu/insurance> (last visited Jan. 27, 2020).

³⁷ N.C. Gen. Stat. § 143-291(b).

³⁸ *General Liability Insurance*, DUKE U., <https://finance.duke.edu/insurance/types/general> (last visited Jan. 27, 2020).

³⁹ University of North Carolina at Chapel Hill, *Release for Unpaid Volunteers & Interns* (2019), <https://hr.unc.edu/files/2017/04/Volunteer-and-Intern-Release-of-Liability.doc>; see also *Unpaid Volunteers, Interns and Visiting Scholars*, U. NORTH CAROLINA AT CHAPEL HILL, <https://hr.unc.edu/employees/policies/other/unpaid-volunteers-interns-visiting-scholars/> (last visited Jan. 27, 2020).

⁴⁰ *Unpaid Volunteers, Interns and Visiting Scholars*, *supra* endnote 39.

⁴¹ See *id.*

⁴² 42 U.S.C. § 14503 *et seq.*

⁴³ N.C. Gen. Stat. § 1-539.10(a).

⁴⁴ *Id.* § 1-539.10(b); see also *Clontz v. St. Mark's Evangelical Lutheran Church*, 578 S.E.2d 654, 660 (N.C. Ct. App. 2003) (holding that for Church and volunteer assistant to proffer statutory immunity as a defense, it was necessary to show absence of liability insurance in pleadings).

⁴⁵ *McKinney v. Greater Gethsemane African Methodist Episcopal Zion Church of Charlotte, N.C., Inc.*, 763 S.E.2d 17 (N.C. Ct. App. 2014).

⁴⁶ N.C. Gen. Stat. § 1-539.11(2).

⁴⁷ *Id.* § 1-539.11(1).

⁴⁸ University of North Carolina, *Office of Sponsored Research Information Sheet 2* (Updated July 1, 2017)
<https://research.unc.edu/files/2014/12/generalinformation.pdf>.