

The National Agricultural Law Center



University of Arkansas



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Reducing Legal Liability for Agricultural Operations

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The National Agricultural Law Center



University of Arkansas



**The nation's leading resource for agricultural
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The Nation's Leading Source of Agricultural and Food Law Research and Information

About the Center

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Located in Fayetteville, Arkansas, the National Agricultural Law Center serves the nation's vast agricultural community and is a key partner of the USDA National Agricultural Library. For more information, click [here](#).



A federal judge in California recently dismissed a constitutional challenge to that state's "Proposition 2," a ballot initiative that addressed the confinement of laying hens, veal calves, and pregnant sows. To read the language of state statutes that have been enacted addressing farm animal confinement, click [here](#).

Twitter @nataglaw

September 26, 2012

[@bammedia](#) [@AgCouncilofAr](#) Nat'l Ag Law Center and Nat'l Assoc. of State Depts. of Agriculture form new partnership, <http://t.co/lsQLTX2f>

Ag and Food Law Blog

[HSUS Files Suit Against NPPC Funding](#)
24 September 2012

Earlier today, the Humane Society of the United States (HSUS) filed suit against the United States D [...]

[Center Hosting Series of Ag Law Producer Workshops in Louisiana, Mississippi, and Arkansas](#)

24 September 2012

The National Agricultural Law Center is hosting a series of producer workshop meetings throughout Lo [...]

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The National Agricultural Law Center



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specific agricultural and*

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Welcome to the National AgLaw Center's electronic resources for an agricultural law Center-published research article; each room is an overview article that is the left side of each reading room.

Periodic browsing of our Reading Rooms is ongoing.

- **Administrative Law**
- **Animal Identification**
- **Aquaculture**
- **Biosecurity**
- **Business Orgs**
- **Clean Water Act**
- **Commercial Trans.**
- **Conservation Programs**
- **Cooperatives**
- **Disaster Asst/Crop Ins**
- **Estate & Taxation**
- **Food Labeling**
- **International Law**
- **Labor**
- **Landowner Liability**
- **Local Food Systems**
- **Nat'l Organic Program**
- **Packers & Stockyards**
- **Pesticides**
- **Renewable Energy**
- **Specialty Crops**
- **Urbanization & Ag**
- **Agritourism**
- **ADR**
- **AFOs**
- **Animal Welfare**
- **Bankruptcy**
- **Biotechnology**
- **Checkoff**
- **Climate Change**
- **Commodity Programs**
- **Corp. Farming**
- **COOL**
- **Environmental Law**
- **Finance & Credit**
- **Food Safety**
- **International Trade**
- **Marketing Orders**
- **Nutrition Programs**
- **PACA**
- **Production Contracts**
- **Secured Trans.**
- **Sustainable Ag**
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- **Overview**
- **Major Statutes**
- **Regulations**
- **Case Law Index**
- **Center Research Publications**
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 - **International Resources**
 - **Publications**
 - **Additional Resources**

planning devices, business entities, and rules governing succession of property, the Internal Revenue Code primarily governs the major tax issues associated with estate planning. [Read the full overview](#)

Note: Recently added resources are posted at the top of the applicable sections.



Topics:

- Landowner Liability
- Business Organizations
- Statutes limiting liability
 - Recreational Use
 - Equine Activity
- Other steps to reduce risk

Premises Liability

- Premises liability is based on the notion of negligence
 - The failure to exercise the care that a ***reasonably prudent person*** would exercise in like circumstances

DUTY

BREACH

CAUSATION

+

DAMAGES

NEGLIGENCE

Negligence

- There are 4 parts to a cause of action for negligence (if they lack any one of these then you are safe!):
 - **Duty of Care**
 - Your responsibilities as a land owner; different in each situation
 - Typically the “reasonable person” standard
 - Duty of Care changes with the person
 - **Breach of Duty**
 - A failure on your part regarding your responsibilities
 - **Causation**
 - Your failure caused the “injury”
 - **Damages**
 - There must be an actual harm that can be redressed

Liability Issues

- So now there are people on your land...
 - How did they get there?
 - Did you invite them or charge them to come onto your land?
 - Did they ask your permission? Are you allowing them to enter for free?
 - Are they trespassing? Are you aware of their presence?

Liability Issues

- 3 Categories of People on Your Premises
 - Trespasser (2 types)
 - Lowest duty of care
 - Licensee
 - Higher duty of care than trespasser, but less than invitee
 - Invitee
 - Highest duty of care

Liability Issues: Trespasser

- Trespassers

- Entered upon land without permission or invitation
- Knowledge of trespasser
 - No knowledge - no duty, no liability
 - Knowledge - duty not to affirmatively harm
 - A course of action which shows a deliberate intention to harm or utter indifference to, or conscious disregard of, the safety of others
- Example: Teenagers going out to your pond and fishing without your permission
 - Do you know about them? What can't you do about them?

TRESPASSERS - CRAIGSLIST

[fayetteville, AR craigslist](#) > [for sale / wanted](#) > [farm & garden](#)

Avoid scams and fraud by dealing locally! Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping protection/certification/guarantee. [More info](#)

I need a mean bull (Siloam springs)

Date: 2012-03-07, 6:04PM CST

Reply to: see below [\[Errors when replying to ads?\]](#)

I am hoping to find an aggressive bull that is protective of his field . I am wanting a very aggressive one that will chase people off.

Call me or text im not particular on the breed

479- [REDACTED]

Liability Issues: Licensee

- Licensee
 - Present for a non-commercial, non-business purpose with the consent of the possessor of the property, such as a social **guest** at someone's residence

Liability Issues: Licensee

- Your Duty:
 - Refrain from injuring the person through willful or wanton conduct
 - i.e., deliberate behavior such as setting booby traps
 - Warn of hidden dangers where the person does not know or is unlikely to know of the conditions or risks
- Example:
 - Someone asks for permission to hunt, walk, use land without a fee
 - Need to warn of the bull on the back 40 that isn't fenced in or of a huge snake population that you know of.
 - What about a pond that is located on the back 40?
 - It is not hidden so there is no general duty to warn them

Recreational Use Statutes

- Provide some form of liability protection for landowners who allow public use of their land.
 - Enacted, in some form, in all 50 states
- Typically applies to licensees, but not to invitees
 - The KS statute works by lowering the duty of care down to that of a trespasser.



Trespass?

- Florida Swimming hole hypothetical
- What do you think the court said?



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Iowa Example

Sallee v. Stewart, 814 N.W.2d 622 (Iowa Ct. App. 2012)

- “Recreational purpose” means the following or any combination thereof: Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.
- D owned a dairy and P was injured in the hay loft on a school field trip...should Rec. Use apply?

Liability Issues: Invitee

- Invitee
 - Person who is invited upon the premises in order to conduct business with the possessor
 - Came on the land for *your* benefit
 - Customers on farm or at your stand
 - **Employees**
 - Students
 - Business visitor

Liability Issues: Invitee

- Your duty:
 - Highest duty of care
 - A general duty to use ordinary care to keep the premises reasonably safe for the benefit of the invitee.
 - Typically you show these people the most concern anyways (i.e. “the customer is always right”)
 - But what about employees?
 - What kind of concern are they typically shown? What kind of jobs do they typically perform?
 - This means making sure your employees have safe equipment, facilities, proper training, etc.

Status of Entrant

- The status of a person on your land can change fluidly.
 - For example -
 - If you allow someone to fish in your pond, but they explore other parts of your land, they may change from a licensee to a trespasser, but if you catch them and accept money for their access to the other parts of the land they become an invitee.
- It is important to define the area that visitors have permission to use.

Review: Liability Issues

- 3 Categories of Entrants on the Premises
 - Trespasser
 - Duty not to affirmatively harm (i.e. no booby traps)
 - Licensee
 - Warn of hidden dangers where the person does not know or is unlikely to know of the conditions or risks and duty not to affirmatively harm
 - Invitee
 - A general duty to use ordinary care to keep the premises reasonably safe for the benefit of the invitee.

More than just “Agritourism” Statutes

- Agritourism - 2013
 - <http://nationalaglawcenter.org/assets/agritourism/index.html>
- Recreational Use - 2010
 - <http://nationalaglawcenter.org/assets/recreationaluse/index.html>
- Equine Activity Statutes - 2011
 - <http://www.animallaw.info/articles/armpequineliability.htm>



Agritourism Planning...Why this example?

- Planning resources:
 - <http://nationalaglawcenter.org/readingrooms/agritourism/>
- There are many resources that provide things to think about BEFORE starting a new business venture.
 - Learning from your mistakes is a great idea, but also learn from the mistakes of others because you will never live long enough to make them all yourself.

Agritourism Planning

- Helpful hints:
 - Mark boundaries carefully
 - Set up an inspection schedule
 - Pros and Cons of this approach
 - Use information from the inspection to provide invitees with a written warning of the dangers.

Insurance

- Who should purchase it?
 - Farmer/agritourism operator
- Who should have their name on the policy?
 - Business entity or you?
- What type of insurance do they have?
 - Many common policies (general farm and homeowners) may not provide protection.

Shooting accident in PA example...

Insurance

- Make the insurance agent aware of any changes and that they are covered by the policy (in writing)
 - If possible have them see the farming operation in person before buying a policy
 - Check in yearly to see if coverage has changed
 - What are the exclusions

Insurance

- Hunting accident
(shooting example)



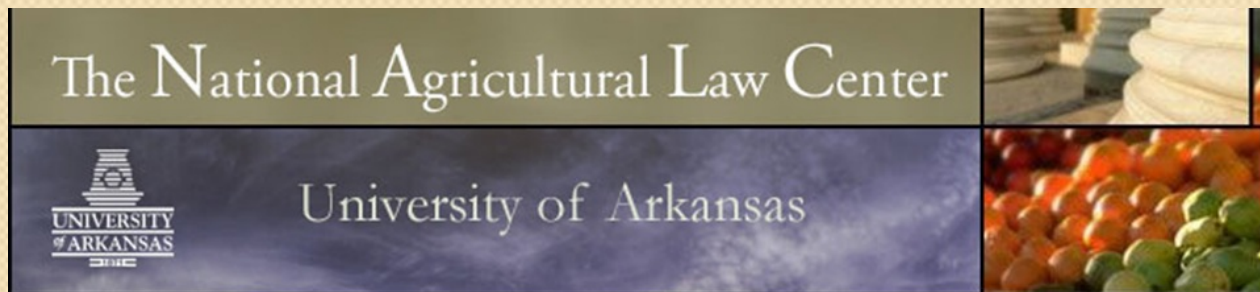


Summary

- None of these methods are 100% foolproof
- Even liability statutes (such as Agritourism) are not perfect
- Having a strong mix of the different protections is important

Questions?

**CONTACT
INFORMATION:**



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