

LANDOWNER LIABILITY

Why does it matter? By the numbers...

- Deaths in Agriculture in 2015 – 401 reported by CDC
 - The FBI reported 86 law enforcement officers killed in the line of duty during that same time period.
 - What do you think was the most dangerous occupation?
 - Truck drivers
- Why does this matter for agriculture?
 - How well do people understand agriculture?
 - “Chocolate milk” example

Premises Liability

- Premises liability refers to the type of liability that arises when a person suffers a personal injury or damage to personal property while upon the property of another

(c)

Premises Liability

- To determine premises liability, plaintiff must establish:
 - The duty of care;
 - That the duty of care was breached;
 - The breach was proximate cause of plaintiff's injury; and
 - The breach resulted in injury to person or property.
- The main issue usually is determining the duty of care owed to the land entrant by the landowner
 - Not all land entrants are treated the same
 - how does the law address this problem?

(c)

Premises Liability

- In general, the law divides land entrants into three categories:
 1. Trespassers;
 2. Licensees; and
 3. Invitees.
- These categories developed under the common law, but have been modified by statute in some states
- The duty of care owed to a land entrant by a landowner typically depends on whether the land entrant is a trespasser, licensee, or an invitee.

(c)

Duty of Care Owed to Trespassers

- A landowner owes a trespasser the duty of care to refrain from willfully or wantonly injuring the trespasser...if you don't even know about the trespasser then do you have a duty of care?
- There is a potential distinction between adult and child trespassers, though
 - The “attractive nuisance” doctrine

(c)

“Willful or Wanton Conduct”

- Defined as a “course of action which shows deliberate intention to harm or utter indifference to, or conscious disregard of, the safety of others”
 - Different states may have slightly different definitions
- Basically this boils down to “Don’t put out booby traps!”
 - How often do you think that this happens?

(c)

Negligence Examples

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, ship protection/certification guarantee. [More info](#)

I need a mean bull (Siloam springs)

Date: 2012-03-07, 6:04PM CST
Reply to: see below [Bm.thewest.com](#)

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]

(c)

Trespassers: Arkansas Statute

- (a)(1) An owner, lessee, or occupant of land does not owe a duty of care to a trespasser on the land and is not liable for any injury to a trespasser on the land.
- (a)(2) No cause of action shall arise against the owner, lessee, or occupant of land until the presence of the trespasser on the premises is known, and then the owner, lessee, or occupant shall be liable only for injuries caused by willful or wanton misconduct of the owner, lessee, or occupant.
 - Ark. Code Ann. § 18-60-108

(c)

Trespassers: Arkansas Statute (cont'd)

- (b) This section does not affect the doctrine of attractive nuisance, except that the doctrine may not be the basis for liability of an owner, lessee, or occupant of agricultural land for any injury to a trespasser over the age of eighteen.
- (c) As used in this section, “trespasser” means a person who enters on the property of another without permission and without an invitation, express or implied.

(c)

Child Trespassers

- In general, child trespassers are afforded greater protection than adult trespassers
- The “attractive nuisance doctrine” recognizes the distinction between child and adult trespassers
 - It arises when children are attracted to property by a dangerous condition
 - i.e. farm equipment, old farm structures, logging equipment, ponds



(c)

Attractive Nuisance Doctrine

“One who maintains upon one’s premises a condition, instrumentality, machine, or other agency which is dangerous to children of tender years by reason of their inability to appreciate the peril, and which may reasonably be expected to attract children of tender years to the premises, is under a duty to exercise reasonable care to protect them against the dangers of the attraction.”

Bader v. Lawson, 320 Ark. 561 (1995) (Arkansas law)

(c)

Licensee

- Licensee: One who is on the premises with permission, but who does not bestow a benefit on the landowner or occupier
- Duty of care: A landowner owes a licensee the duty to warn of hidden dangers that the landowner knows about and the licensee cannot reasonably be expected to discover
 - Aggressive bull in fenced area
- Common examples: Social guests*; someone hunting or fishing on property free-of-charge

(c)

Invitee

- One who is on the premises for business purposes or for mutual advantage rather than solely for the benefit of the person entering the property
- Examples: Someone who pays to duck hunt on landowner's farm; custom harvester; cattle buyer; employees; etc...

(c)

Invitee: Duty of Care

- The landowner owes an invitee the duty of care to make and keep the premises safe
- and**
- to warn of existing dangers that cannot be made safe



(c)

Review: Status of Entrant

22

- The status of a person on the 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.
 - However, 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.

LIABILITY STATUTES

Arkansas Recreational Use Statute

Ark. Code Ann § 18-11-301 (Purpose):

- The purpose of this subchapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.
 - Classic example: allowing hunting on property



Recreational Use Statute

- Arkansas' recreational use statute helps protect a landowner who "invites or permits without charge any person to use his or her property for recreational purposes"
- The protection is given as long as the landowner does not
 - Promise that the land is safe;
 - Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
 - Assume responsibility for the injury
 - "Charge" for entering/use of the land
- How does it work?

Definitions

"Recreational Purpose"

- [H]unting, fishing, swimming, boating, camping, pleasure driving, nature study, water skiing, viewing or enjoying historical, archeological, scenic or scientific sites.

"Charge"

- [A]dmission fee for permission to go upon or use the land
 - Charge does NOT include: sharing of game, fish, or other products of recreational use, or contributions in kind, services or cash paid to reduce or offset costs and eliminate losses from recreational use

Agritourism Statute:

Purpose: Prevents liability for "inherent risks" when warning is posted properly

- "Inherent risk" means dangers or conditions that are an integral part of an agritourism activity including without limitation:
 - (A) The propensity of a wild or domestic animal to behave in ways that may result in injury, harm, or death to persons on or around the wild or domestic animal;
 - (B) Hazards such as surface and subsurface conditions;
 - (C) Natural conditions of land, vegetation, and waters;
 - (D) Ordinary dangers of structures or equipment used in farming or ranching operations; and
 - (E) The potential of a participant to act in a negligent way that may contribute to injury to the participant or others, whether failing to follow safety procedures or failing to act with reasonable caution while engaging in the agritourism activity
 - What does this one mean?

Agritourism Activity: Definitions

Definition:

"Agritourism activity" means an interactive or passive activity carried out with or without payment to an agritourism activity operator on a farm, ranch, or agribusiness operation related to agriculture, food production, historic traditions, or nature-watching conducted by an agritourism activity operator for the education, entertainment, or recreation of participants.

"Agritourism activity" includes without limitation:

- (i) A farming or ranching activity;
- (ii) The viewing of historic, cultural, or natural attractions;
- (iii) A harvest-your-own activity;
- (iv) Nature-watching; and
- (v) An activity involving an animal exhibition at an agricultural fair.

"Agritourism activity" **does not include:**

- (i) A road side fruit and vegetable stand; or
- (ii) An operation exclusively devoted to the sale of merchandise or food at retail

Agritourism Statutes- Exceptions

- In Arkansas, no protection is offered if the agritourism operator:
 - Commits gross negligence in terms of safety;
 - Has actual knowledge of a dangerous condition but fails to make the danger known;
 - Intentionally injures a participant; or
 - Commits other acts, errors, or omissions that constitute willful or wanton misconduct, gross negligence, or criminal conduct that proximately causes injury, damage, or death.

Reducing Risk:

- At each agritourism activity, signs must be posted at or near the main entrance to the agritourism activity and in **black letters** at least one (1") in height containing the following warning:

"WARNING – Under Arkansas law, an agritourism activity operator is not liable for the injury or death of a participant in an agritourism activity resulting from the inherent risk of agritourism activities. Inherent risks include without limitation the risk of animals, weather, land conditions, and the potential for you as a participant to act in a negligent way that may contribute to your own injury or death. You are assuming the risk of participating in this agritourism activity."

- Shall have written contracts that must also include this warning language
- At each agritourism activity, the operator must post a sign outlining any specific or known hazards in that particular area

Equine/Livestock Activity Statute Definitions

Equine Activity

- Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting;
- Equine training and teaching activities;
- Boarding equines;
- Riding, inspecting, or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; and
- Rides, hunts, or other equine activities of any type, however informal or impromptu

Livestock Activity

- Grazing, herding, feeding, branding, milking, or other activity that involves the care or maintenance of livestock;
- A livestock show, fair, competition, or auction;
- A livestock training or teaching activity;
- Boarding livestock; and
- Inspecting or evaluating livestock

Equine Activities in Arkansas

- In general, a tort action has only been successfully brought against an “equine activity sponsor, an employee of an equine activity sponsor, a livestock sponsor, an employee of a livestock sponsor, a livestock owner, a livestock facility, or a livestock auction market” for personal or property damages related to:
 - The use of faulty tack;
 - Failure to determine the injured person’s ability to safely manage a horse; OR
 - Failure to post warning signs concerning dangerous conditions
- Notice that the exceptions deal with horses...this is because livestock was just added in fairly recently.

Reducing Risk:

- Must be in black letters that are at least 1 inch tall

WARNING

Under Arkansas law, an equine activity sponsor, livestock activity sponsor, livestock owner, livestock facility, and livestock auction market are not liable for an injury to or the death of a participant in equine activities or livestock activities resulting from the inherent risk of equine activities or livestock activities.

- Must be in a clearly visible location on or near stables, corrals, or arenas where the equine activity sponsor or livestock activity sponsor conducts equine or livestock activities

TIPS FOR MITIGATING LANDOWNER LIABILITY

Boundaries are helpful

- Restricting access to only the part of the farm that is used for the agritourism activities can greatly help with reducing legal risk.
- Think about the boundary though!



Insurance

- Who should purchase it?
 - Almost everybody!
- Who should have their name on the policy?
 - Business entity or you?
- What type of insurance do they have?
 - Match your policy to what you do!
 - If you have livestock, spray pesticides, etc... make sure they are covered with no/low caps
 - Agritourism needs unique policies
 - Many agritourism policies exclude communicable diseases unless you purchase a rider!
 - Example: Dehn's Pumpkin patch...

Insurance Tips

- If possible have the agent see the farming operation in person before buying a policy
- Check in yearly to see if coverage has changed
- Identify the exclusions and ask questions

Get everything in writing!

- Your agent might change
- They will not be able to remember every conversation that they had with you

Contact Information:



The Nation's Leading Source for Agricultural and Food Law Research and Information

THE NATIONAL AGRICULTURAL
LAW CENTER

Rusty W. Rumley

Phone: (479) 575-2636

Email: rrumley@uark.edu

www.nationalaglawcenter.org