



Equine Activity & Agritourism Statutes: Strategies for Risk Management

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Landowner Liability: How to Protect Your Operation

Tiffany Dowell Lashmet
Texas A&M Agrilife Extension

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*We want to hear
from you!*



Stakeholder Survey



Outline

- What is Liability?
- Liability Protection Statutes
- Hypotheticals
- Practical Strategies to Reduce Risk



What is Liability? Premises & Negligence

- 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?



Premises Liability

In general, the law divides land entrants into three categories:

- Trespasser: One who is on the premises without permission and who does not confer a benefit on the landowner or occupier
 - Refrain from willfully or wantonly injuring the trespasser
- Licensee: One who is on the premises with permission, but who does not bestow a benefit on the landowner or occupier
 - Warn of hidden dangers
- 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
 - To make and keep the premises safe and to warn of existing dangers that cannot be made safe



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, ponds



Common Agritourism Statute:



State Agritourism Statutes

Purpose: Prevents liability for “inherent risks” when warning is posted properly, and no exceptions are triggered.

- “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

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.

In Oklahoma, no protection is offered if the agritourism operator:

- Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant...
- Has actual knowledge or reasonably should have known of a dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal



Warning Sign Language

- 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.”

- Different states can also add other requirements:
 - At each agritourism activity, the operator must post a sign outlining any specific or known hazards in that particular area
 - Contracts must contain the warning language exactly as the sign
 - LA requires an approved agritourism plan from LSU before you can post the warning sign to get protected
 - MO requires that the agritourism operation is registered with the state ag department

Common Equine/Livestock Activity Statute



State Equine/Livestock
Activity Statutes

Purpose: Prevents liability for “inherent risks” from equine and livestock activities when warning is posted properly, and no exceptions are triggered.

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 and Oklahoma

In Arkansas & Oklahoma, no protection if equine/livestock activity sponsor:

- Knowingly or should have known that they are using faulty tack;
- Fails to make reasonable and prudent efforts to determine the injured person's ability to safely manage a horse;
- Shows a willful and wanton disregard for participant safety; OR
- Intentionally injures a participant

Most states are pretty standardized



Warning Sign Language

- 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
 - Like with agritourism statutes there can be variation from state to state



Risk Assessment

What is the purpose of implementing a comprehensive risk assessment/management program?



Identify hazards, mitigate
the hazards, minimize risk.

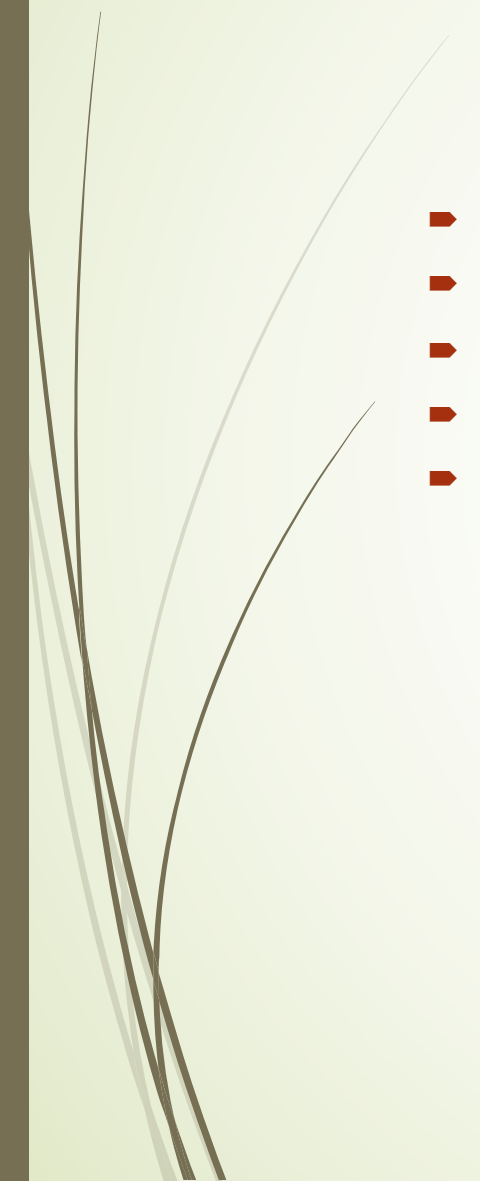


Risk Assessment – Application of SOC

- ▶ Physical Facilities
 - ▶ Management Protocols
 - ▶ Instructional Guidelines
 - ▶ Behavioral Issues
 - ▶ Documentation
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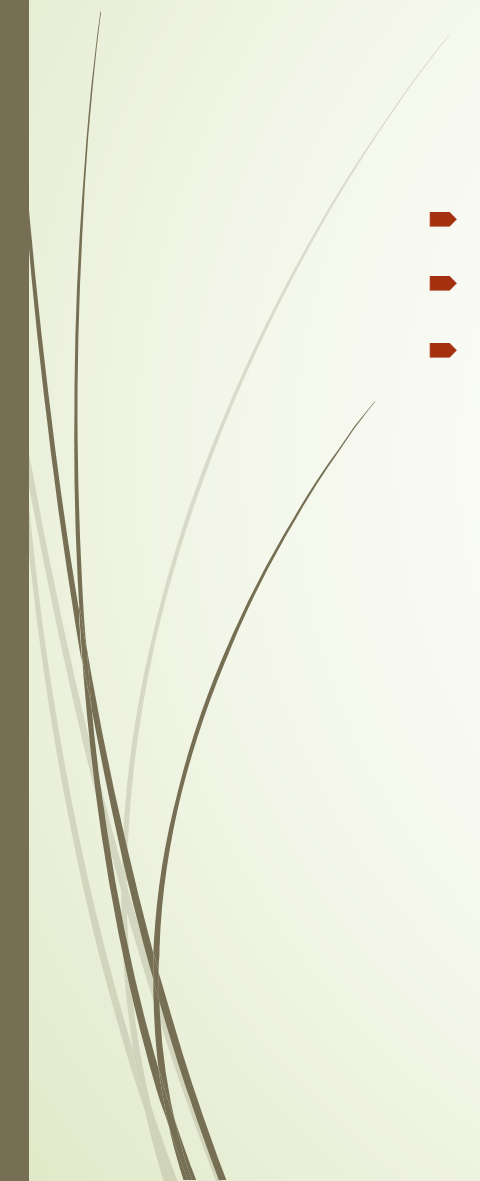



Case Example – Match the Horse to Rider

- ▶ Beginner Rider
 - ▶ Small horse
 - ▶ Overweight Rider
 - ▶ Trail Ride
 - ▶ Incident
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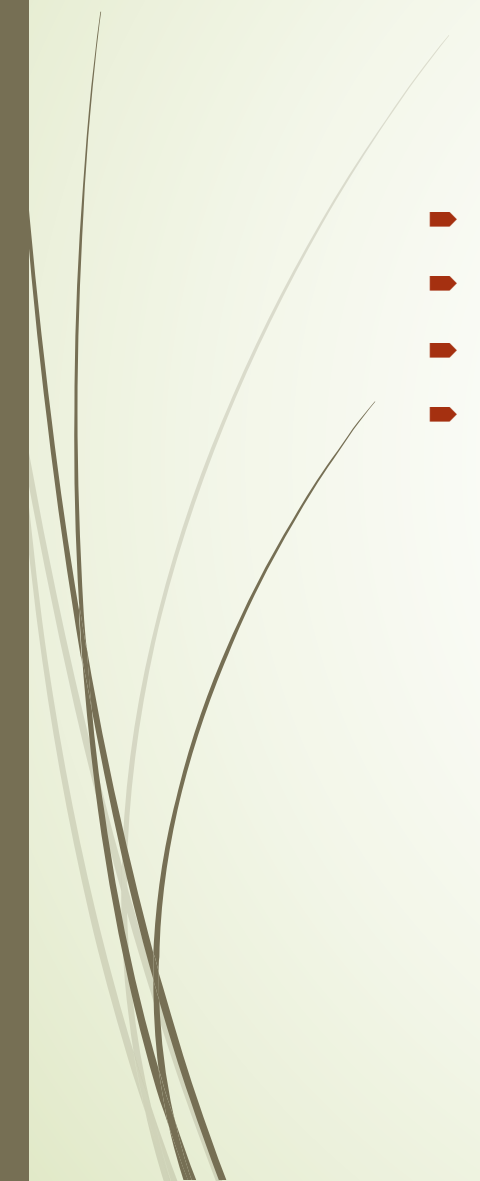


Case Example – Faulty Tack/Equipment

- ▶ Beginner Rider
 - ▶ Cinch Not Properly Secured
 - ▶ Incident
- 

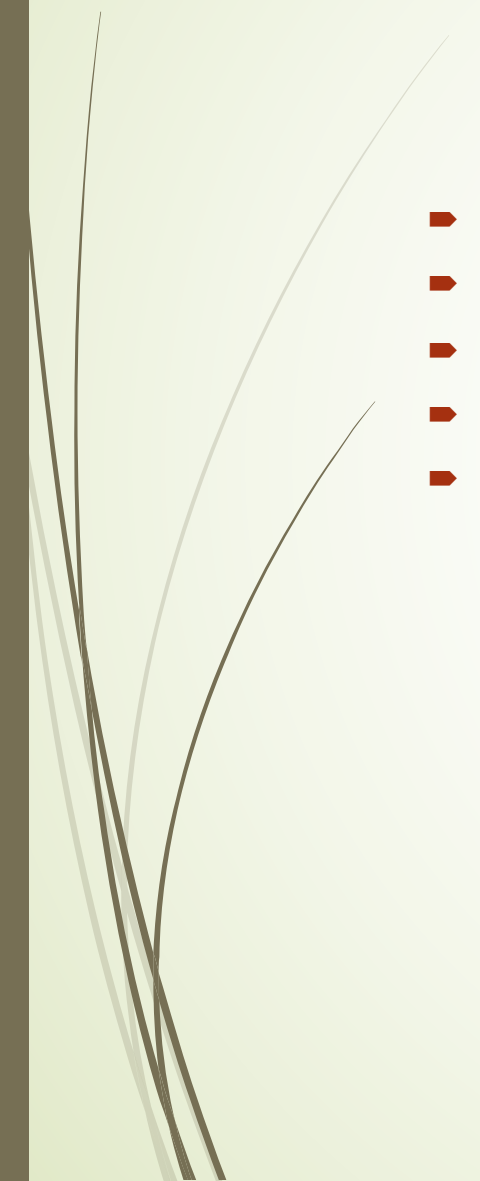


Case Example – No Instruction

- ▶ Beginner Rider
 - ▶ Instructions were “how to go left, how to go right, how to stop”
 - ▶ Trail Ride
 - ▶ Incident
- 



Case Example – Intentional Act

- ▶ Beginner Rider
 - ▶ Instructor had rider drop stirrups and reins
 - ▶ Riding Lesson
 - ▶ Instructor hit horse with riding crop
 - ▶ Incident
- 

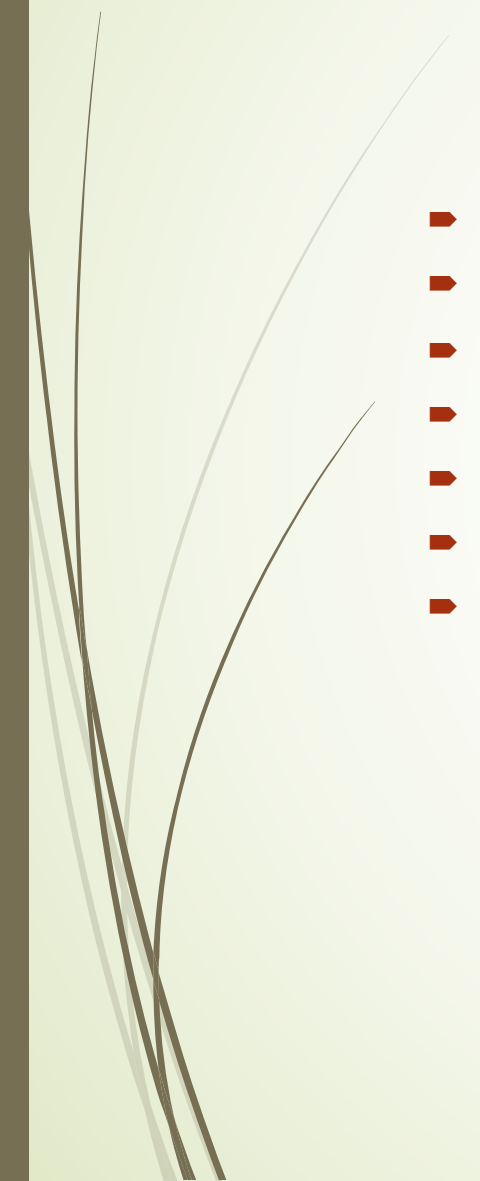


Risk Assessment Scenarios

- ▶ Petting Zoos
 - ▶ Farm Tours
 - ▶ Show Facilities
 - ▶ Agricultural Operations
- 



Practical Strategies to Reduce Liability

- ▶ Proper Planning
 - ▶ ***Insurance***
 - ▶ Liability Statutes & Waivers
 - ▶ Employee Training
 - ▶ Business Entities
 - ▶ Restricting access to some areas of your property
 - ▶ Observing similar operations
- 

Agritourism Survey



- Be counted! If your agricultural business is open to visitors, please take 5 minutes to complete this short survey from the University of Vermont in partnership with the National Agricultural Law Center. The goal of this survey is to understand how many agricultural operations in the U.S. welcome visitors for education, recreation, direct sales, hospitality and entertainment.
- This information will be used to inform future programs and support for agriculture.

