



PennState Law

Center for Agricultural
and Shale Law





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Legal Planning for Specialty Crop Producers:

Understanding Liability Protections, Regulatory
Processes, and Other Legal Risks





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Legal Liability Risks from Business Invitees on the Farm

Wednesday, March 7, 2022
12:00pm – 1:00pm





Criminal versus Civil Liability

- Criminal Liability
 - Brought by the state
 - Public wrong
 - Remedy: jail, pay a fine, etc.
- Civil Liability
 - Brought by private party
 - Usually contract or tort liability
 - Remedy: pay the injured party (sometimes injunction)



What is a Tort?

(Not a **torte**)





What is a Tort?

- An act or omission that results in injury or harm to a person, property, or reputation



Tort Example

- Examples:
 - Farmer Fred has a strawberry operation where he invites the public to his farm to pick strawberries. Fred allows his pigs to wander the strawberry fields in the evenings. The waste from the pigs contaminates the strawberries and several guests become ill.
- What might be the result of the criminal action?
- What might be the result of the civil action?



Burden of Proof

- In a civil case:
 - “Preponderance of the evidence”
 - In favor of plaintiff by more than 50%
- In contrast, in a criminal case:
 - “Beyond a reasonable doubt”



Relief

- Compensatory damages
 - Medical care
 - Pain & suffering – determined by a jury
- Punitive damages
 - Intended to punish the defendant
- Injunctive relief
 - Court order requiring the defendant to cease the activity



Types of Torts

- Negligence
- Intentional Tort
- Strict Liability



Negligence

- Failure to act as a reasonable person would act under similar circumstances
 - Carelessness, thoughtlessness, oversight



Negligence

- Negligence
 - Duty
 - Breach of Duty
 - What is the “Standard of Care”?
 - Proximate causation
 - Actual Damages



Negligence - Duty

- When is there a duty?
 - Law
 - Ex: Farmers moving farm equipment on the road have a duty
 - Contract
 - Ex: Farmer has contract with a farmhand to take care of the cows
 - Assumption of duty
 - Ex: A visitor starts to put out a small fire



Negligence - Duty

- Duty of care owed to persons entering property:
 - Trespasser
 - Licensee
 - Invitee



Negligence - Duty

- Duty of care owed to persons entering property:
 - **Trespasser**
 - A person who enters property without permission
 - Landowner must not maliciously injure



Negligence - Duty

- Duty of care owed to persons entering property:
 - **Licensee**
 - A person who enters property with permission
 - Landowner must warn of dangerous conditions (eg. Dangerous animals)



Negligence - Duty

- Duty of care owed to persons entering property:
 - **Invitee**
 - A person who enters for the benefit of landowner (business purpose)
 - Landowner must make premises safe or warn of conditions that cannot be repaired



Negligence – Duty

- Attractive nuisance
 - Applies to child trespassers
 - Landowner may be liable for injuries to a child trespasser when the landowner would not be liable to an adult trespasser
 - Children do not have the same experience or judgement
 - Is it reasonably foreseeable that a child would trespass?
 - Ponds
 - Animals
 - machinery



Negligence – Breach of Duty

- To determine if there was a breach of duty, we must first determine the “Standard of Care”
 - Standard of Care: What a reasonable person would do under similar circumstances
 - Did the farmer/business owner meet professional standards?



Negligence – Breach of Duty

- Negligence *per se*: when conduct that is a violation of the law causes harm
 - Violating the law is inherently considered negligent behavior
 - Elements:
 - There is a statute that defines a standard of conduct
 - Defendant violated the statute
 - The plaintiff is a member of the class that the statute was designed to protect
 - The plaintiff suffered the type of injury the statute was designed to prevent



Negligence – Proximate Causation

- Two tests:
 - “But for” the actions of the defendant would the injury have occurred?
 - Were the defendant’s actions a “substantial factor” in causing the injury?
- The injury must be the reasonably foreseeable result of the defendant’s misconduct



Negligence – Actual Damages

- Economic loss
 - Fair market value of lost property
 - Repairs to damaged property
 - Medical expenses
- Damages may also include:
 - Reduced quality of life
 - Pain & suffering



Negligence - Defenses

- Contributory negligence
 - The injured party was also negligent in their actions
 - Bars recovery to damages
- Comparative negligence
 - The jury is asked to assign fault between the parties with percentages
 - Generally, the injured party may still recover damages so long as their negligence was less than that of the defendant



Negligence - Defenses

- Assumption of the Risk
 - Participation in an athletic activity assumes the normal risks of the activity
- Waivers
 - Receiving notice of the risks
 - Waiver signatures
 - The defendant is not absolved from risks that are not normal risks of the activity



Intentional Tort

- A voluntary act that constitutes a tort
 - Battery
 - Assault
 - False imprisonment
 - Intentional infliction of emotional distress
 - Defamation
 - Invasion of privacy
 - Nuisance & Trespass



Intentional Tort– Trespass

- Trespass
 - intentionally physically interfering with the person or property of the plaintiff, or intentionally causing something to enter the plaintiff's land.



Intentional Tort– Nuisance

- Nuisance
 - Interference or disruption of a person's private use and enjoyment of their land.



Strict Liability

- Does not depend on negligence or intent
- Three types of strict liability:
 - Animals known to be harmful
 - Abnormally dangerous activities
 - Products liability
 - March 23rd:
 - “Legal Liabilities in Selling Raw and Processed Specialty Crop Products”



Vicarious Liability

- "An employer is generally liable for torts of an employee that were done within the scope of employment"
- Independent contracts:
 - Make sure they have insurance
 - Get an indemnity agreement



Protections

- Liability Insurance
- Entity Formation
- Notice of Risk and Waivers
- State Liability Legislation



Protections: Liability Insurance

- Insurance may be required by municipality
- Cost Considerations
- Not all companies may be willing to cover all activities
 - Ex: Pumpkin cannon





Protections: Liability Insurance

- Document everything
- Notify your insurance agency if problems/injuries occur



Protections: Entity Formation

- Examples:
 - Partnership
 - Corporation
 - LLC
 - Non-profit Corporation
 - Sole Proprietorship



Protections: Entity Formation

- Considerations
 - Liability Protection
 - Tax Treatment
 - Simplicity
 - Intergenerational Transfers/ Transfers Generally

April 6th webinar:

“Business Structures for Operational Resilience and Liability Avoidance”



Protections: Notice and Waivers

- “Assumption of Risk”
 - Signage
 - Notices/tickets
 - Signed waivers



Protections: State Laws

- State Liability Statutes
 - Pennsylvania's Agritourism Activity Protection Act
- Right to Farm
- PA Equine Activity Immunity Act
- Recreational Use of Land and Water Act



Protections: Liability Statutes

- What does a liability protection statute do?
 - Limits the liability of an agritourism operator
 - Participants “cannot” sue the agritourism operator for injuries sustained from an inherent risk of an activity
 - Ex: What would be an inherent risk at an animal petting zoo?



Liability Statutes - Pennsylvania



- Agritourism Activity Protection Act
 - (Act 27 of 2021)
 - Effective August 29, 2021
- Provides agritourism providers liability protection from civil liability for injury or damages sustained by a third-party participant in agritourism activity.



Liability Statutes - Pennsylvania



- Important Exclusions:
 - No liability protection for weddings or concerts
 - No liability protection for overnight stays
 - No liability protection for food and beverage service



Liability Statutes - Pennsylvania



- In order to receive liability protection, an operator must meet the key elements of the statute:
 - Agritourism definition
 - Farm must be “normal agricultural operation”
 - Written Agreement or Tickets
 - Signage



Liability Statutes - Pennsylvania



- Agritourism definition:
 - “A farm-related tourism or farm-related entertainment activity that takes place on agricultural land and allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in or be entertained by an aspect of agricultural production, harvesting, husbandry or rural lifestyle that occurs on the farm.”



Liability Statutes - Pennsylvania



- Normal Agricultural Operation
 - "The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities..."
 - 10 acres
 - (if less than 10 acres) Income of \$10,000 or more



Liability Statutes - Pennsylvania



Written Agreement or Tickets

"AGREEMENT AND WARNING: I understand and acknowledge that, except for limited circumstances listed below, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. I understand that I have accepted all risk of injury, death, property damage and other loss that may result from an agritourism activity. I understand that an agritourism activity provider is not protected from liability if the provider:

1. Performs an act in a grossly negligent manner and causes injury or damages to a participant.
2. Purposefully causes a participant's injury.
3. Acts or fails to act in a way that constitutes criminal conduct.
4. Recklessly fails to warn or guard against a dangerous condition that causes injury or damages to a participant. A dangerous condition is a condition that creates an imminent and substantial risk of injury or damages to a participant."



Liability Statutes - Pennsylvania



- Tickets (alternative to written agreement)
 - Must have “substantially the same language”
 - Must require the tickets for entry to the activity



Liability Statutes - Pennsylvania



- Signage
 - "WARNING: Read your written agreement or the back of your ticket. Under Pennsylvania law, except for limited circumstances, an agritourism activity provider is not liable for any injury to or death of a participant resulting from an agritourism activity. Do not participate in the activity if you do not wish to waive liability."
 - Every entrance or all locations
 - 3ft by 2ft



Liability Statutes - Pennsylvania



- Application of the law to minors
 - Parent or guardian must sign on behalf of minor
 - Guardian must sign on behalf of care-dependent person



Liability Statutes - Pennsylvania



- PA Agritourism Immunity Act
 - <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2021&sessInd=0&act=27>
- Right to Farm Act:
 - https://pennstatelaw.libguides.com/ld.php?content_id=19902751
- PA Farm Bureau resources
 - <https://pfb.com/agritourism-liability/>



Right to Farm

- Enacted in all 50 states
- Attempt to remedy farm – non-farm conflicts
- Focus on nuisance lawsuits against farms





Right to Farm

- Landowners cannot use land in manner that unreasonably interferes with another landowner's use of land
- Determination of nuisance balances benefit of use against harm caused by use



Right to Farm

- Requires municipalities to exclude normal agricultural operations from definition of public nuisance
- Limits nuisance actions against normal agricultural operations
- “Normal Agricultural Operation”
 - Farm has been operating for 1 year
 - Conditions complained of have existed since beginning of operation; and
 - Conditions complained of are normal agricultural operations



Right to Farm



- Direct commercial sales are permitted:
 - On property owned and operated by landowner
 - Who produces at least 50% of agricultural commodities sold



Right to Farm

- Right to Farm Act does not protect farms where:
 - Agricultural operation has direct adverse effect on public health and safety;
 - Zoning ordinance prohibits or limits operations;
 - Agricultural operation is in violation of federal, state, or local statute or regulation;
 - Agricultural operation pollutes water or causes flooding.



PA Equine Activity Immunity Act

- 4 P.S. §§ 601-606
- Also referred to as Pennsylvania Equine Liability Law
- Act 93 or 2005
- Enacted: December 22, 2005
- Effective: February 21, 2006





PA Equine Activity Immunity Act

- Provides immunity from negligence liability for certain entities engaged in equine activities if specific requirements are satisfied
 - Assumption of risk
 - Signage
 - Does not provide immunity from claims presented by children
 - One does not assume risk for faulty equipment



PA Equine Activity Immunity Act

- Signage requirements:
 - Must be conspicuously posted on property
 - In at least 2 locations
 - On signs at least three feet by two feet
 - “You assume the risk of equine activities pursuant to Pennsylvania law”



PA Equine Activity Immunity Act

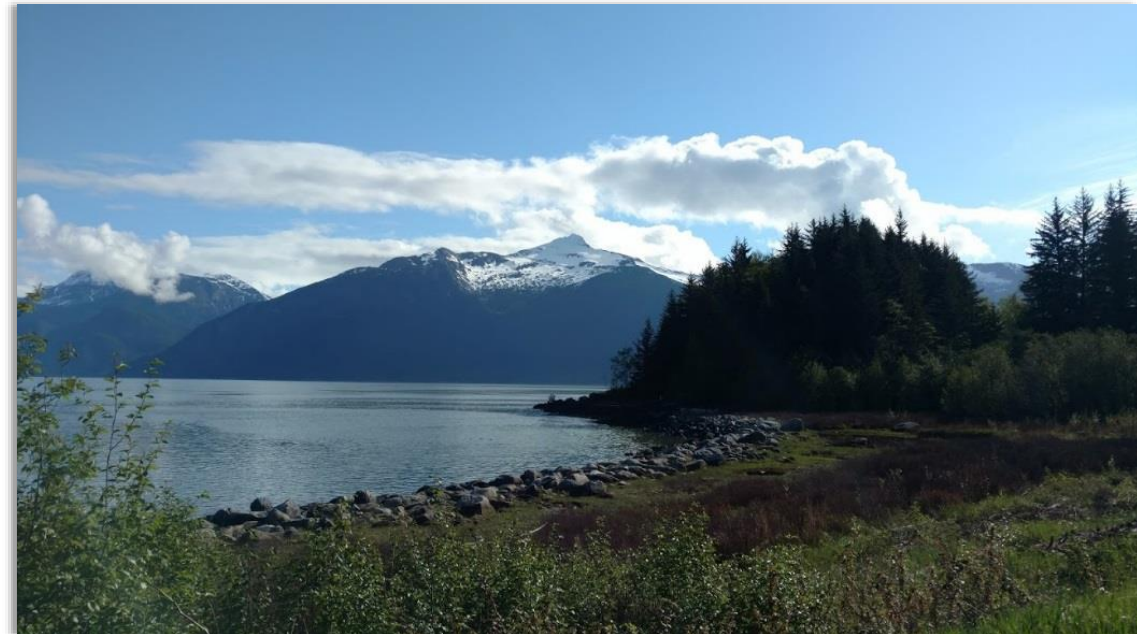


- What are equine activities?
 - Equine training, teaching, riding, instruction, show, fairs, parades, competitions, or performances
 - Clinics, seminars, and demonstrations
 - Boarding
 - Breeding



RULWA

- Recreational Use of Land and Water Act
- 68 P.S. §§ 477-1 to 477-8
- In effect since 1966
- Applies to landowners who allow the public to enter their land for recreational use





RULWA

- Limits liability to landowners who make their land and water areas available for public recreational use
- Landowners do not owe a duty to keep the premises safe for public recreational users
- Landowners do not owe duty to warn of dangerous conditions



RULWA

- Liability not limited for “willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.”



RULWA

- Recent Update: Oct. 24, 2018
- Act 98: “An act encouraging landowners to make land and water areas available to the public for recreational purposes by limiting liability in connection therewith, and repealing certain acts”
 - Limits liability
 - **Landowners may accept payment in some situations**
 - Expands list of examples of “recreational purpose”
- Duty of Care: Trespasser



Pennsylvania Agricultural Mediation Program



- Who can request mediation?
 - USDA-related issues:
 - Agricultural Loans
 - Wetlands determinations
 - Compliance with farm programs, including conservation programs
 - National organic program established under the Organic Foods Production Act of 1990
 - Agricultural Credit
 - Rural water loan programs
 - Grazing on National Forest System land
 - Pesticides
 - Non-USDA issues:
 - Lease issues; including land leases and equipment leases.
 - Family farm transition.
 - Farmer-neighbor disputes



Pennsylvania Agricultural Mediation Program

- Who conducts mediation?
 - Impartial 3rd party mediator
- If an agreement is not reached, the requestor may seek appeals or legal action



Pennsylvania Agricultural Mediation Program

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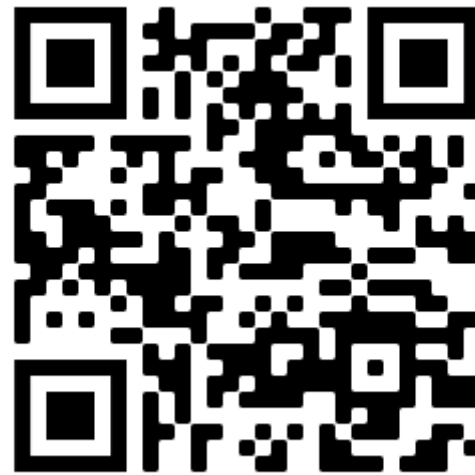
Summary: Practical tips to consider

- ☐ Put up warning signs
- ☐ Review your insurance policies
- ☐ Entity formation
- ☐ “Assumption of risk” notices
- ☐ Waivers
- ☐ Weekly/daily safety checks



Specialty Crop Producer Survey on Liability

Use your phone to scan the QR code:



Or, go to the survey here:

<https://forms.office.com/r/ucAcxuTXci>



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Thank you!

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