



PennState Law

Center for Agricultural
and Shale Law

Legal Considerations for Agritourism Operations

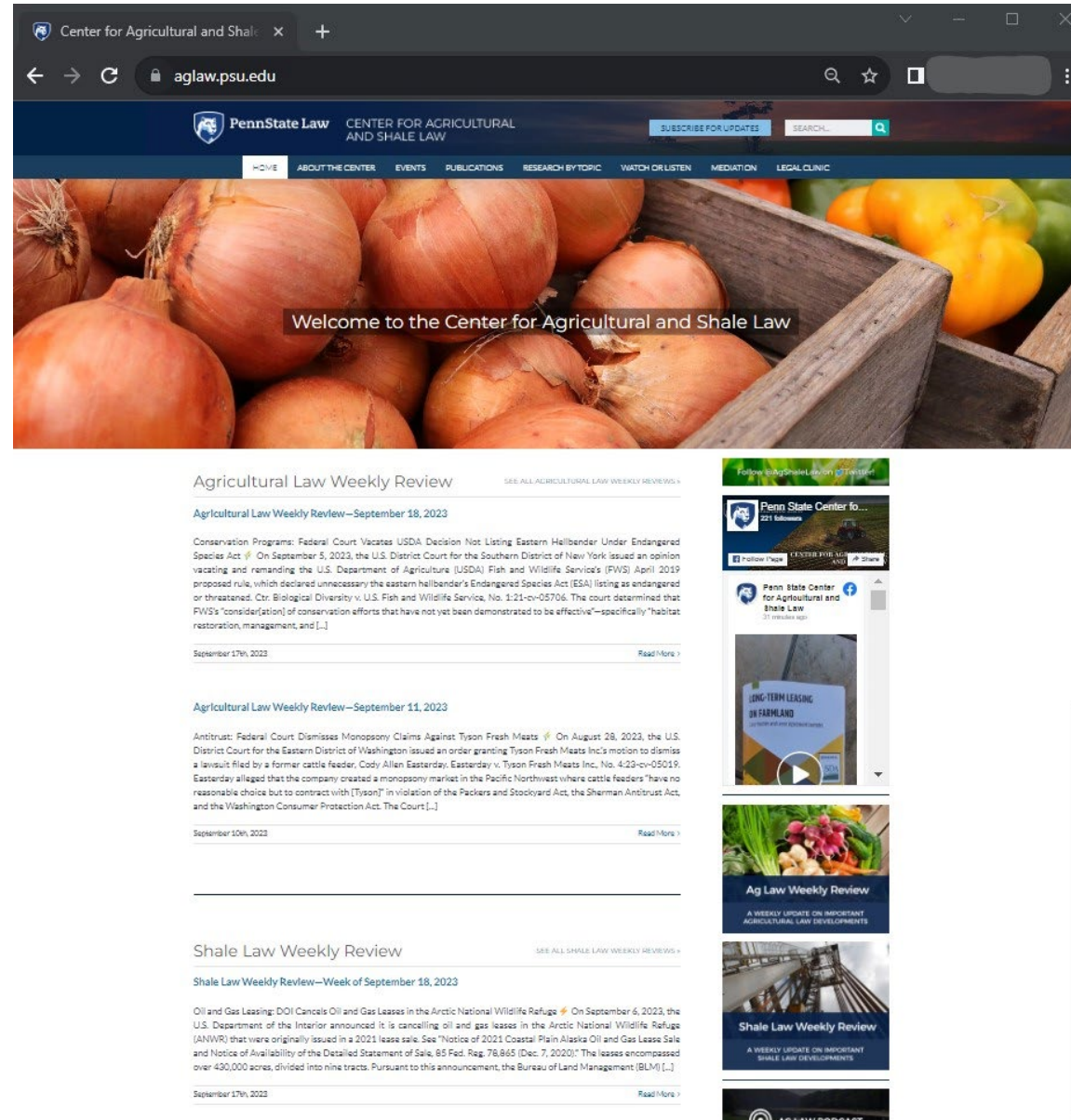
Agritourism & On-Farm Markets & Events: Planning for Your Success in 2024

Wednesday, March 6, 2024

Jacqueline Schweichler, Esq.



Our Website





Ag Law Center Website Resources

aglaw.psu.edu

- Agricultural Law Weekly Review
- Agricultural Law Virtual Resource Rooms
- Agricultural Law Tracker
- Shale Law Tracker
- Agricultural Law Podcast
- Social Media
 - Twitter, Facebook, LinkedIn
- Videos/Presentations
- PA Ag Mediation Program



Agricultural Law Weekly Review

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Agricultural Law Weekly Review—Week Ending November 11, 2022

Agricultural Antitrust: Federal Court Denies Tyson's Motion to Dismiss Poultry Renderers' Antitrust Suit 🌟 On November 8, 2022, the U.S. District Court for the Northern District of Georgia issued an order denying a motion to dismiss filed by River Valley Ingredients, LLC; Tyson Poultry, Inc.; and Tyson Farms, Inc.—the defendants in an antitrust case filed by three southeast poultry rendering companies. *American Proteins, Inc. v. River Valley Ingredients, LLC*, No.

Tweets from @AgShaleLaw

PSU Ag & Shale ...
@AgShaleLaw · 2h

Today at noon (ET):
"Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales" 🍷
1 CLE credit available for PA attorneys
[Learn more and register:](#)



What is Agritourism?

- Types of Agritourism:
 - On farm farmers' markets
 - You-Pick (fruits/vegetables)
 - Hay rides
 - Pumpkin patches
 - Corn mazes
 - Christmas tree farms
 - Wineries
 - Barn weddings
 - On farm petting zoos
 - Goat Yoga



What sort of laws will affect my agritourism operation?

- Laws affecting your business:
 - Taxes
 - Regulations & municipal law
 - how/where you can build (zoning & permitting)
 - Insurance (may be required)
 - State statutes
 - Liability and lawsuits
 - Nuisance
 - Negligence
 - Strict liability



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Regulatory Considerations

- Zoning
- Construction code
- Food Safety
- Liquor Laws
- Animal Welfare Laws
- Other





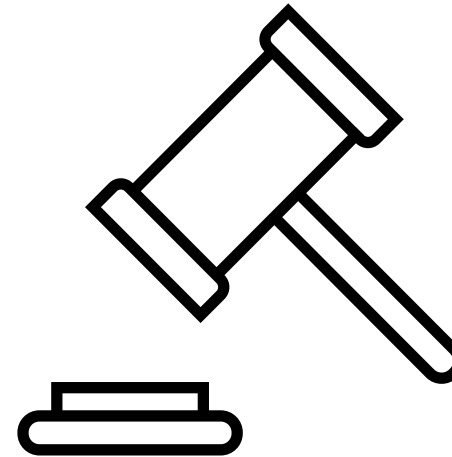
Regulations: Zoning

- Ordinances
 - Traffic
 - Parking
 - Hours of Operation
 - Noise/Lighting
 - Structures



Types of lawsuits brought against farming operations:

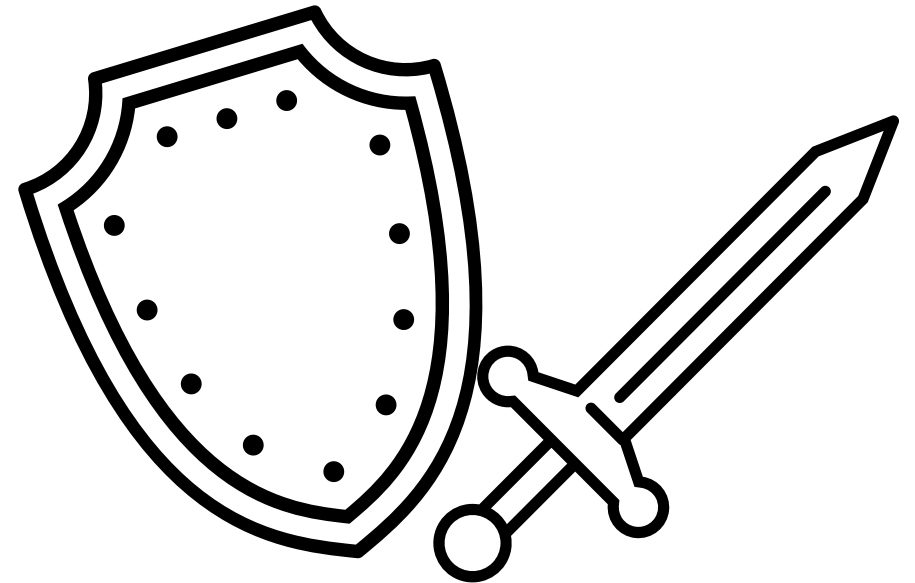
- Negligence
- Strict liability
- Intentional torts
 - Ex: Nuisance





How to protect against liability claims:

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





Liability Insurance

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





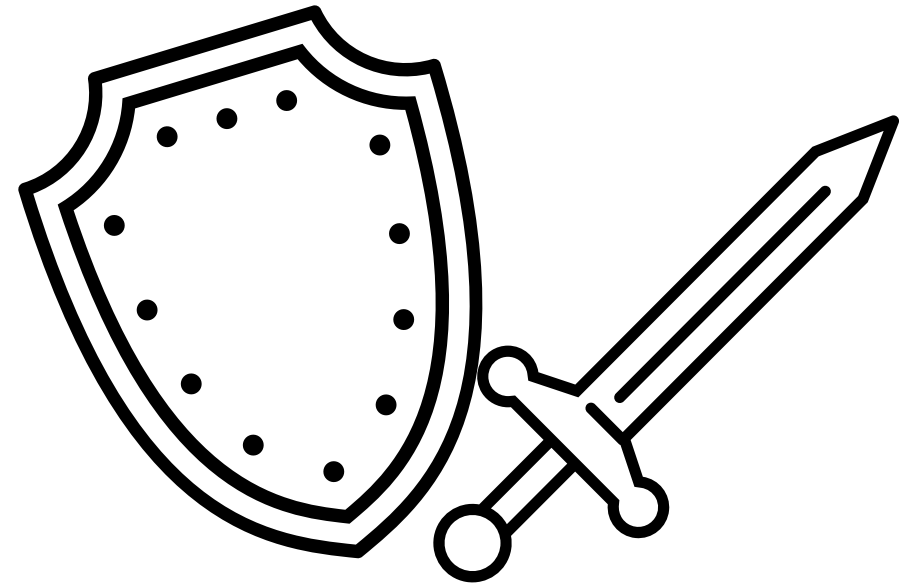
Liability Insurance

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



How to protect against liability claims:

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





Protections: Entity Formation

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



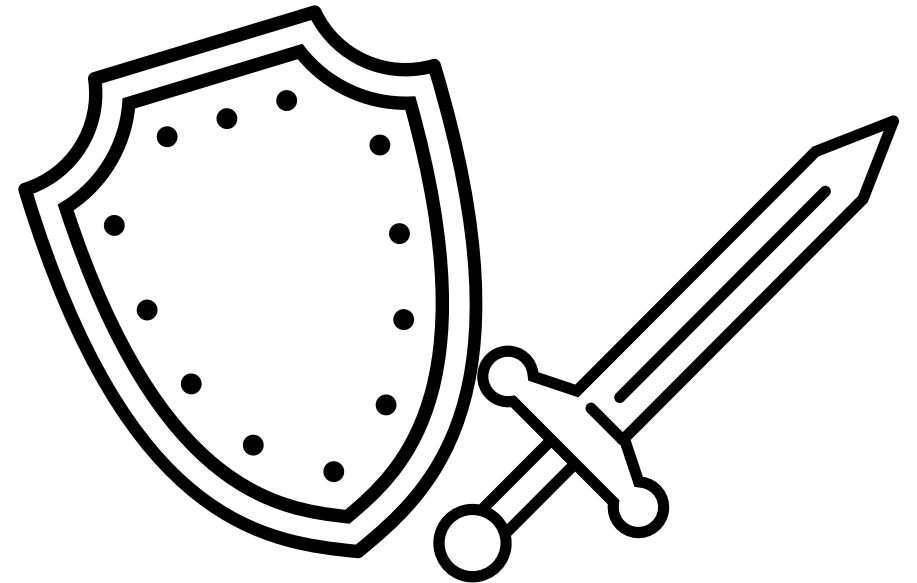
Protections: Entity Formation

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



How to protect against liability claims:

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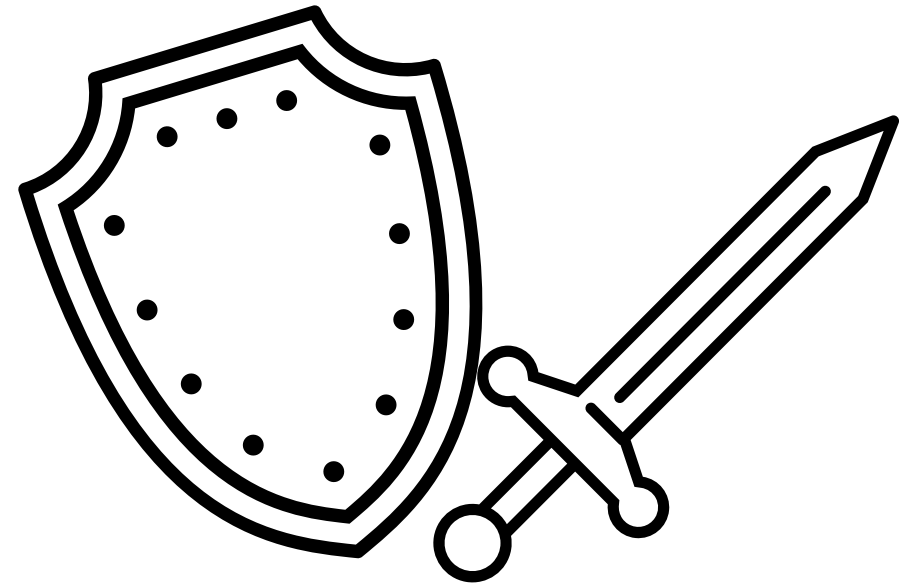
Protections: Notice and Waivers

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



How to protect against liability claims:

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





Protections: State Liability Laws

- Pennsylvania's Agritourism Activity Protection Act
- PA Equine Activity Immunity Act
- Recreational Use of Land and Water Act



Pennsylvania's Agritourism Activity Protection Act



Protections: Agritourism 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?
 - Ex: What would be an inherent risk at an apple picking operation?



PA's Agritourism Activity Protection Act

- 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.





PA's Agritourism Activity Protection Act

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





PA's Agritourism Activity Protection Act

- 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



PA's Agritourism Activity Protection Act

- 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.”



PA's Agritourism Activity Protection Act

- Normal Agricultural Operation (as defined by PA's Right to Farm)
 - "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, or
 - (if less than 10 acres) Income of \$10,000 or more



PA's Agritourism Activity Protection Act

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





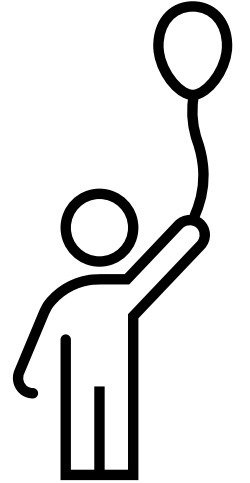
Liability Statutes - Pennsylvania

- 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/>



PA Equine Activity Immunity Act



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



PA Equine Activity Immunity Act

-does not apply to faulty equipment-

- *Melendez v. Happy Trails and Riding Center*
 - September 26, 2016, U.S. District Court for the Middle District of Pennsylvania
 - The participant signed a waiver assuming the risk of all activities of horseback riding.
 - Signs were posted at the facility
 - While horseback riding, a stirrup broke & participant was injured
 - Melendez argued that the Equine Activity Immunity Act did not apply because he was not aware that the stirrup could be defective.
 - Court agreed: “this was not a case where the risk is so obvious that the knowledge could be inferred”



Recreational Use of Land and Water Act



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
- <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=98>



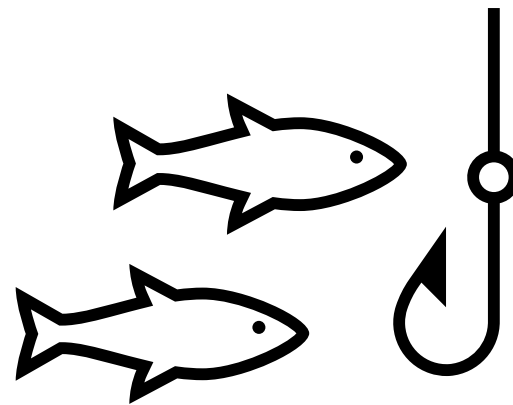
RULWA

- 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
 - Duty of Care: Trespasser



RULWA

- Recent Update: Oct. 24, 2018
 - Expands list of examples of “recreational purpose”
 - Landowners may accept payment in some situations





RULWA

- **“"Recreational purpose" means any activity undertaken or viewed for exercise, sport, education, recreation, relaxation or pleasure and includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, recreational noncommercial aircraft operations or recreational noncommercial ultralight operations on private airstrips, camping, picnicking, hiking, pleasure driving, snowmobiling, all-terrain vehicle and motorcycle riding, nature study, water skiing, water sports, cave exploration and viewing or enjoying historical, archaeological, scenic, or scientific sites.”**



RULWA

- **Charge:** “The term does not include voluntary contributions, in-kind contributions or contributions made to an owner of real property that are not retained by the owner of the real property and are used by the owner of the real property exclusively for one or more of the following purposes:
 - (i) conserving or maintaining the land;
 - (ii) paying taxes on the real property; or
 - (iii) paying for liability insurance on the real property.”



RULWA

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





Summary: Practical tips for everyone

- Review your insurance policies
- Entity formation
- Put up warning signs
- “Assumption of risk” notices
- Waivers
- Weekly/daily safety checks
- Review state legislation to see if it could apply to you



**I'm being sued, but I don't want to go to court.
Do I have any options?**



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

Contact us:

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Today's Path

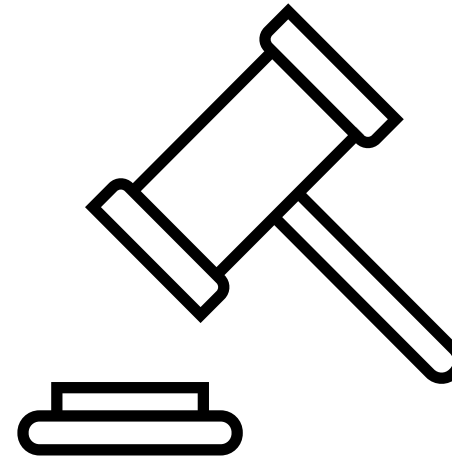
- How to protect against liability claims
- How to avoid lawsuits (with mediation)
- What type of lawsuits can I expect?
 - And what are my legal obligations?





Types of lawsuits brought against farming operations:

- Negligence
- Strict liability
- Intentional torts
 - Ex: Nuisance





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)



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, socially
 - Landowner must warn of dangerous conditions (eg. Dangerous animals)



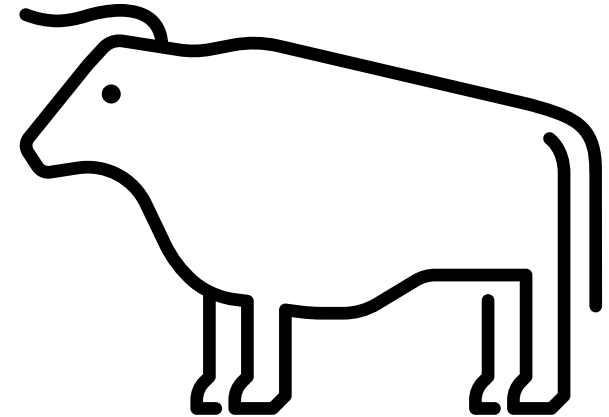
Negligence - Duty

- 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



Strict Liability

- Does not depend on negligence or intent
- Three types of strict liability:
 - Animals known to be harmful
 - Abnormally dangerous activities
 - Products liability
 - Design defect
 - Manufacturing defect
 - Labeling issues





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– Nuisance

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



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Thank you!

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EXTENSION
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Questions?