

Liability for Visitors to Farm Property

Farmers have unique liability concerns for harm that could occur to visitors to their farm property. Compared to a typical residential property owner, a farmer often has more land, guests, trespassers, and dangerous equipment and machinery. These factors increase the potential for injury to visitors and raise the risk of liability for the farmer who is the owner, lessor, or occupant of farm property. One way to lessen liability risk is to understand the rules of legal liability that apply when there is an injury to a farm visitor.

Liability Applies to the "Possessor" of the Property

When a visitor suffers an injury, the "possessor" of the property is the first party to whom legal liability might extend. Many states define the possessor as the party who is "in control" of the property area where the injury occurred. One important indication of control over the property is an exercise of the power and right to admit people to the premises and to exclude people from it.

The possessor of the property is not always the property owner. A farm tenant or an independent contractor performing work on the property can be the possessor, if that party has control over the property where the injury occurred. If more than one party has control of the property, the law allocates liability between parties. An employee having control of the property and acting within the scope of his employment is not a possessor; the employer is the possessor for liability purposes.

For these reasons, the farmer should examine liability concerns for all property that he or she owns, leases, or performs work on as an independent contractor. The key question is whether the farmer has the authority or shares the authority to control access to the property. If so, liability could attach to the farmer if someone is injured on the property.

Liability Factors

A number of factors determine whether the possessor is liable for an injury to a property visitor. First, some states differentiate liability on the basis of the "status" of the injured visitor. Second, allowing dangerous conditions on the property may create liability. Third, the possessor might have a legal defense that prevents or reduces liability. A farmer must consider each of these factors when assessing a liability situation.

The Status of the Property Visitor

The property possessor has a legal duty to prevent harm to a visitor on the property. However, the degree of care the possessor must undertake to fulfill this legal duty depends upon the "status" of the visitor, that is, why the visitor is on the property. If a person visits the property solely for the possessor's economic purposes, the law requires the possessor to exhibit a high degree of care for the visitor. On the other hand, when a visitor has no permission to be on the property, the possessor has a minimal duty to ensure the visitor's safety.

The Invitee. An invitee is a person the possessor invites onto the property for the possessor's financial benefit or business purposes. The invitation may be expressly stated or implied by the possessor's actions. Examples of invitees are customers, clients, salespeople, and delivery people. A social guest is not an invitee.

The possessor has the highest duty of care for an invitee, which is to protect the invitee from harm by keeping the property in a reasonably safe condition. The duty requires the possessor to either:

- Take reasonable steps to discover and eliminate all known and unknown dangerous conditions on the property, or
- Give the visitor adequate warning of dangerous conditions that have not been eliminated.

The Licensee. A licensee is a person who is on the property for his or her own benefit. The licensee is not invited onto the property but is there with the possessor's permission or acquiescence. A person who has permission to cut firewood on the property is an example of a licensee.

The possessor owes a lesser duty of care to a licensee than to an invitee. The required duty is one of preventing harm where the possessor is aware of a dangerous condition with which the licensee could come into contact. The possessor is not obligated to prevent harm from unknown dangerous conditions. The possessor must either:

- Make safe any known dangerous conditions that the licensee would be expected to encounter, or
- Warn the licensee of known dangerous conditions that have not been eliminated.

The Trespasser. A third type of visitor to the property is the trespasser, a person who has not been invited onto the property and does

not have the possessor's permission to be on the property. Examples of trespassers are a hunter or a hiker who has entered the property without permission or a salesperson who remains on the property after being asked to leave. There are two types of trespassers - the unknown trespasser and the known trespasser. The possessor's duty of care differs for each type of trespasser.

The Social Guest. A social guest is a person invited onto the property for the mutual enjoyment of hospitality, such as a party guest. Many Ohio courts have declined to label a social guest as either an invitee or a licensee, but have in effect applied the same duty of care as that required for a licensee. A possessor should, at a minimum, protect the social guest from known dangers by eliminating the dangers or providing a warning.

The Recreational User. Many times a recreational user is defined as a visitor using nonresidential property for recreational purposes with the permission of the possessor and without providing compensation for the use. The law specifically defines "recreational uses" as hunting, fishing, trapping, camping, hiking, or swimming, or engaging in other recreational pursuits. The possessor is immune from liability for harm suffered by a recreational user.

The Condition of the Property

The condition of the property is an important factor when determining liability for an injury. Was the injury the result of a dangerous condition on the property? Could the injury have been avoided if the possessor had inspected the property and eliminated the dangerous condition? Should the visitor have been aware that the condition was dangerous? These questions all relate to the condition of the property.

The possessor must protect invitees, licensees, and known trespassers from dangerous conditions that are known to the possessor, or that the possessor should know of. In the case of invitees, the duty extends also to hidden dangerous conditions, requiring the possessor to actively inspect the property for dangerous conditions.

What is a "hidden" dangerous condition? A hidden danger is one that a visitor would not discover, even if being cautious. Because the danger is hidden, harm is unavoidable. Examples of hidden dangers are a hole in the floor that is covered by loose straw or an animal trap beneath the surface of a pond. A possessor must protect an invitee from coming into contact with hidden dangerous conditions, but the duty does not extend to licensees or trespassers.

Eliminating dangerous conditions: Once a possessor identifies a dangerous condition, he or she must either eliminate the condition or warn of its existence. The elimination of a dangerous condition often involves repair work.

Warning of dangerous conditions: The possessor must warn visitors of dangerous conditions that have not been eliminated. Warnings can be made in the form of verbal instructions, written instructions, maps, signs, or by roping or blocking off the dangerous area.

Employers and Liability

Different considerations may arise when an injury occurs because of an employee's actions. Generally, an employer is liable for harm resulting from an employee's actions. If an employee creates a dangerous condition on the property or fails to warn a visitor of a dangerous condition, the employer is liable. One exception to this rule is that the employer may not be liable for injuries resulting from willful or intentional acts by the employee.

That is, if an employee intentionally harms a visitor without the employer's knowledge or consent, the employer usually is not liable.

Liability for Injuries by Animals

Special rules of law apply when an animal on the property causes an injury to a property visitor. The "owner or keeper" of the animal is the party who might be liable. The issue of liability depends upon the type of animal causing the injury, the foreseeability of the injury, and the activity that resulted in the harm.

The Liability Process

One misconception about liability is that it occurs automatically. To the contrary, a visitor seeking to impose liability on a farmer must take action. The visitor could demand payment of medical bills or request insurance carrier information. In these situations, the farmer or the farmer's insurance company may agree to compensate the visitor for the injury. A farmer does not become legally liable to the visitor, however, unless the visitor successfully advances a civil claim in a court of law.

Civil litigation for injuries to a property visitor usually revolves around a claim of "negligence" against the farmer. Negligent actions require the visitor to prove that the farmer breached his or her duty of care to the visitor and that the breach caused the visitor's injuries. The farmer may dispute the allegations and offer defenses to liability. The final judgment of the court or jury determines whether the farmer is liable, the extent of liability, and the amount of compensation due the visitor, if any.

The Farmer's Defenses to Liability

The law provides several defenses to a potential liability situation. A successful legal defense can remove liability completely or

reduce the amount of liability. A possessor has three potential defenses where the actions of the visitor affect the injury. A fourth defense, the Recreational User's Statute, provides a defense to liability where property is used for certain recreational purposes.

Exceeding the Scope of the Invitation or Permission: If a visitor goes beyond the scope of the invitation or permission, the possessor is not liable for the resulting injury.

Assumption of Risk: The law does not impose liability on the possessor if a visitor ignores obvious risks. The assumption of risk defense prevents liability for the possessor where a visitor is aware of or should be aware of the risk, voluntarily encounters the risk, and is injured as a result of undertaking the risk.

Contributory Negligence: Often, a visitor's own negligent acts cause or contribute to the injury.

Limiting Liability

There are many actions a farmer can take to limit the potential of liability for injuries to visitors on the property.

Inspect the Property. The possessor should regularly inspect the property for dangerous conditions, being sure to note all hidden and known dangerous conditions. Document the property inspections in writing.

Eliminate Dangerous Conditions Where Possible. The possessor will have the best assurance of liability protection by eliminating all dangerous conditions. Ensure that the repairs are complete and performed properly, and document the repair work in writing.

Provide Warnings. If a dangerous condition cannot be eliminated, the possessor should provide clear warnings of the condition. A

warning can be in the form of a sign, a map, or instructions, or by roping, fencing, or otherwise blocking access to the dangerous condition. Avoid verbal warnings that cannot be documented. Keep a written record and/or copy of all warnings.

Educate and Train Employees. Farm employees should also understand liability rules. The employees must be adequately trained so that they know how to recognize and eliminate dangerous conditions, do not create or contribute to dangerous conditions, and know how to warn visitors of the conditions.

Obtain Adequate Liability Insurance. Insurance coverage can provide additional assurance that the farm won't be lost due to a personal injury. Just as important as having the insurance policy is ensuring that the coverage is comprehensive and accurate. Carefully review with the insurance provider all uses of the property and types of visitors to the property. Notify the provider when new activities occur on the property, such as opening a farm market. Constant communication with the provider will eliminate liability exposure for an activity that the possessor mistakenly believed would be covered by the insurance policy.

Document Injuries. Create an accurate accounting of accidents. When an injury occurs, immediately document how and where the injury occurred, the conditions of the property in the vicinity of the accident, and warnings given prior to the injury. Note witnesses to the injury. If possible, take photographs or a videotape of the accident site.

A farmer will benefit from understanding when and why he or she will be liable for an injury to a farm visitor. The answers to a few simple questions create a framework for reviewing liability issues:

- What types of visitors do I have on the property?
- What duty of care do I owe the visitors?

- Have I fulfilled my duty of care by eliminating or warning of all dangers?
- What more can I do to limit liability?

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Legal Considerations References

Ohio State University Fact Sheet
Liability for Visitors to Farm Property
ALS-1002-00 by: Peggy Kirk Hall
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2120 Fyffe Road
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Agritourism Workbook
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