

Protecting Your Farm or Ranch Assets

Developing Direct Market Agricultural Enterprises
and Understanding Legal Liability in the Inland Northwest

Chapter 1: Safety on the Premises



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Maintaining a Safe Premise

Background

Farmers have unique liability concerns for harm that would occur to visitors on the farm property. A farmer often has more land, guests, trespassers, and dangerous equipment and machinery compared to a typical residential property owner. The “possessor” of the property is the first party to whom legal liability might extend. The possessor of the property is not always the property owner. The farmer should examine liability concerns for all property that he or she owns, leases, or performs work on as an independent contractor.

The farmer has a legal duty to protect a visitor on the property. The farmer must use reasonable care in keeping the premises free from dangerous conditions. Negligence is the failure to exercise the care that a reasonable person would exercise. An injured customer may claim that the accident was a result of your breach of duty to use reasonable care in keeping the premises free from dangerous conditions. The standard of care will depend on the circumstances.

Reasonable care toward children is expanded to take into account their smaller size, curiosity, and lack of caution or knowledge of particular dangers. If there are dangerous conditions on the property and children are likely to come onto the property then there is a heightened responsibility. Dangerous yet attractive conditions may include swimming pools, chemicals and chemical storage areas, grain bins, manure lagoons, water wells and cisterns, heavy equipment, machinery and tools, gas and water tanks, and some animals.

Status of the Property Visitor

There are three types of visitors that may come onto your property. Your level of responsibility varies with respect to each visitor’s status. An invitee is a person the farmer invites onto the property for business purposes. The invitation may be expressly stated or implied by the farmer’s actions. The farmer 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 farmer must take reasonable steps to eliminate all known and unknown dangerous conditions on the property or to give the visitor adequate warning of dangerous conditions that have not been eliminated.

Reasonable care is the quality of care a reasonable person would exercise in the same or similar circumstances.

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 farmer’s permission or

acquiescence. A farmer must make safe any known dangerous conditions that the licensee would be expected to encounter or to warn the licensee of known dangerous conditions that have not been eliminated.

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. The farmer is not obligated to protect an unknown trespasser from dangerous conditions. The farmer's only duty is to refrain from harming the person by willful conduct. However, if the farmer knows that a person is trespassing on the property, the farmer must protect the trespasser from known dangerous conditions by eliminating the condition or warning the trespasser. An example of known trespassers is neighbor children who regularly cut across the field.

In the State of Washington, a farmer shall not be liable for unintentional injuries to a recreational user who does not pay a fee for coming on the property. A farmer who allows members of the public to use his or her for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hang gliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefore, shall not be liable for unintentional injuries to such users.

Condition of the Property

The condition of the property is a critical factor when determining liability for 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?

A dangerous condition is one that creates an unreasonable and unnecessary risk of harm that is not readily apparent to the visitor.

- Should the visitor have been aware that the condition was dangerous?

The determination of whether a condition is dangerous is based on two questions:

1. Does the condition create an unreasonable or unnecessary risk of harm?
2. Is the condition readily apparent to the visitor? If it does create an unreasonable risk of harm and it is not readily apparent, it is likely a dangerous condition.

A hidden dangerous condition is one a visitor would not discover even if being cautious. Since the condition is hidden and the visitor encounters this situation, harm is unavoidable. Some examples of these conditions are a hole in the floor that is covered with straw or an animal trap that is covered and camouflaged.

The farmer must take care that the elimination of a dangerous condition is complete and does not create new dangerous conditions. The farmer must ensure that repair work or other actions are successful in eliminating the condition. The farmer must warn visitors of dangerous conditions that have not been eliminated. This warning can be spoken, written, maps, signs or by roping or blocking off the dangerous area. The warning must clearly identify the danger. A spoken warning should also be backed up by a written warning.

Employees and Liability

If the employee creates a dangerous condition on the property and fails to warn a visitor of this condition, the employee is liable. The employer may not be liable for injuries resulting from willful or intentional acts of the employee.

Liability for Injuries by Animals

The owner of a dog is strictly liable for any injury that may occur when a invitee is on the property. Washington RCW16.08.040 clearly indicates that the farmer is liable regardless of the former viciousness of the dog or the owners knowledge of former viciousness of the dog.

Limiting Liability

There are many actions a farmer can take to limit the potential of liability for injuries to visitors on the property. When inviting the public to come onto your property landowner must take all necessary precautions against their injury and to warn of all known and hidden dangers.

- Inspect the Property. The farmer 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. Make sure all shields and protective devices are properly in place on machinery and equipment
- **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.
- **Educate Visitors.** Educate parents, teachers and other visitors on any danger. Advise both verbally and in writing what the rules of behavior are when on the farm.
- **Maintain Records.** Take photographs or videotape of the property. Maintain a record of property inspections, corrective measures and protective actions.

Hold Harmless Agreement

A waiver or release is a way to shift liability to someone else. When appropriate, you are better off having a release than not. The release will not be useful if you have not taken reasonable precautions and reduce the possible risks of harm to your customers.

When inviting the public to your farm, you must first make your property as safe as possible to avoid accidents. However, should one occur, the agreements you make prior to the farm activity may dictate who is legally responsible for the injury. Following are explanations of a few practices you should be aware of before proceeding with farm visits. A discussion with your legal counsel is advised.

Hold Harmless Agreement. A hold harmless agreement between two parties states that one party will assume the risk of legal liability associated with an event for the other party. Usually landlords will include hold harmless language in leases to protect them from being sued if an accident occurs on their property. Farmers may ask on-site vendors to sign hold harmless agreements that release farmers from liability should a vendor-related accident occur on the farm.

Participant Waivers. Typically, participant waivers are used when minors are involved in school or camp activities, and would be appropriate for on-farm school tours. The minor's parents or guardians are required to sign the document agreeing to release the farmer from any responsibility for injury to their child. However, the waiver does not absolve farmers from liability for injuries directly caused by their negligence.

Supporting resources:

Sample Hold Harmless Agreements on page 21 – 23 of this chapter

Volunteer Assumption of Risk Forms

[<http://www.alephnet.net/MLK/PDF/SecondHarvest.pdf>]

Ohio State University Fact Sheet: liability for Visitors to Farm Property

[<http://ohioline.osu.edu/als-fact/1002.html>]

**Ohio State University Fact Sheet
Agricultural, Environmental, and Development Economics
2120 Fyffe Road, Columbus, Ohio 43210**

Liability for Visitors to Farm Property

ALS-1002-00

Peggy Kirk Hall

Farmers have unique liability concerns for harm that could occur to visitors to the 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. Ohio law defines 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 the several 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.

Relationship with Landlord-Tenant Law

A liability issue that arises on leased property should be considered within the context of landlord-tenant law. A property lease usually transfers possession and control over a property to the tenant, and the tenant is likely to be the possessor of the property for liability purposes. However, in some circumstances, the landlord, rather than the possessor, will be liable for an injury caused by conditions that were not under the tenant's control. Examples include a structural defect or a dangerous condition that existed prior to the lease period.

Additionally, Ohio's Landlords and Tenants Act¹ imposes minimum standards upon a landlord for the condition of residential premises. The landlord will be liable for harm attributable to a failure of these statutory responsibilities.

For a further discussion of landlord-tenant law and liability for injuries on leased premises, see 76 Ohio Jurisprudence 3d, Premises Liability §§67-71.

Liability Factors

A number of factors determine whether the possessor is liable for an injury to a property visitor. First, Ohio law differentiates 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.

Traditionally, Ohio law has identified a visitor's status as an invitee, licensee, or trespasser. Additionally, the law recognizes a social guest as a separate type of visitor, and recently the Ohio legislature created a new type of visitor - the recreational user. Each type of property visitor is described here.

1. 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:

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

The myth of the "pick your own" customer. There is a mistaken belief that operating as a "pick your own" business relieves liability for injuries to a customer. To the contrary, a "pick your own" customer is an invitee under Ohio law, since the possessor has invited the customer onto the property for the possessor's financial benefit. The possessor owes the highest duty of care to a "pick your own" customer.

2. 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:

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

3. 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.

- a. Unknown trespassers. A possessor has the lowest duty of care to an unknown trespasser, a person who does not have permission to be on the property and whose presence on the property is unknown to the

- possessor. The possessor is not obligated to protect an unknown trespasser from dangerous conditions. Rather, the possessor's only duty is to refrain from harming the person by willful conduct. That is, if a possessor discovers an unknown trespasser, the possessor may not intentionally harm the person or harm the person by careless conduct.
- b. Known trespassers. The duty owed to a trespasser changes when the possessor becomes aware of the trespass. If a possessor knows that a person is trespassing on the property, the possessor must protect the trespasser from known dangerous conditions by eliminating the condition or warning the trespasser. This duty of care is the same duty required for a licensee. Examples of known trespassers include the neighbor children who regularly cut across the field or an unauthorized hunter who is in open view of the possessor.
- c. Child trespassers. The law in Ohio treats child trespassers the same as adult trespassers, meaning that the possessor does not have a special duty of care for a child trespasser. One exception to this rule is the "dangerous instrumentality" exception, described later in this publication.
4. 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.
5. The Recreational User. Ohio's Recreational User Statute² defines a recreational user 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 "dangerous condition"? Ohio courts define a dangerous condition as one that creates an unreasonable and unnecessary risk of harm that is not readily apparent to the visitor. A minimal or trivial defect in the property is not sufficient to amount to a dangerous condition, such as a nail head popping out of barn siding. A situation that a person ordinarily encounters, such as ice and snow on outdoor steps in winter, is not a dangerous condition for these purposes. Additionally, the law expects a person to appreciate "open and obvious" dangers, such as a pond or a swimming pool, which are not considered dangerous conditions for these purposes.

A two-step question process can help determine whether a condition is dangerous:

1. Does the condition create an unreasonable or unnecessary risk of harm? If so, it may be a dangerous condition, based upon question No. 2.
2. Is the condition readily apparent to the visitor? If it does create an unreasonable risk of harm and it is not readily apparent, it is likely a dangerous condition.

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. The possessor should take care to ensure that repair work or other actions taken to eliminate a dangerous condition do completely eliminate the condition and do not worsen the condition or create new dangerous conditions. For example, patching the hole in the wooden floor with an old piece of linoleum eliminates the hole but creates a new dangerous condition - unstable flooring through which the visitor may fall.

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. The possessor should ensure that the warning method used clearly identifies the danger. Once the possessor has provided a warning, the possessor has fulfilled the legal duty of care, and

a visitor who proceeds to encounter the dangerous condition assumes the risk of liability.

Dangerous conditions and trespassing children. Ohio differs from the majority of states that follow an "attractive nuisance" rule, which requires a possessor to protect trespassing children from an attractive nuisance on the property. An attractive nuisance is an artificial condition that attracts a child but which the child doesn't recognize as dangerous, such as a swimming pool. Ohio is one of only three states that has not adopted the attractive nuisance doctrine. A possessor in Ohio is not required to protect trespassing children from an "attractive nuisance." Note, however, the dangerous instrumentality exception to this rule, described here.

The "dangerous instrumentality" exception. Ohio does recognize a special duty to trespassing children in one situation. The "dangerous instrumentality" rule provides that a possessor can be liable for harm to a trespassing child if the possessor creates an actively dangerous situation on the property in an area where children are known to trespass. Specifically, the courts have stated that the possessor may be liable if two conditions exist:

1. The possessor actively and negligently operates a dangerous apparatus on the property, and
2. The presence of the trespassing child is foreseeable.

One case applying the dangerous instrumentality exception involved an electrical transformer station. The property owner knew that trespassing children often visited the property where the transformer was located, so the owner had taken care to fence in the transformer. In this situation, the property owner would not be liable if a trespasser broke through the fence and was injured on the transformer. However, when the owner ceased to maintain the protective fence and allowed openings to develop in the fence, the court determined that the owner was negligent by allowing the operation of a "highly powerful and dangerous unit of electrical machinery"³ upon premises frequented by trespassing children.

The dangerous instrumentality rule has not been applied to a farm-related injury. However, farmers should be aware that the rule could be applicable where farmers operate machinery and equipment, leave machinery and equipment running, or work with chemicals in an area frequented by trespassing children. Any of these situations might be deemed a "dangerous instrumentality" by a court. In these and similar situations, the farmer should take additional care to protect against the possibility of harm to a trespassing child.

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.

If an injury occurs to an employee, Ohio's Workers' Compensation Law is the first avenue of recourse for the employee. Liability of the possessor may be limited by the Workers' Compensation Law, depending upon the location and cause of the employee's injuries. Ohio's Workers' Compensation Law is an income-maintenance and health-care-insurance program that covers work-related injuries and deaths. However, if an employer is required to participate in the Workers' Compensation program and does not, the employer is vulnerable not only to liability for an employee's injury, but also to prosecution by the State of Ohio.

For more information on the Workers' Compensation program, see Ohio Farm Labor Handbook, OSU Extension Bulletin 833.

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.

Dogs and Wild or Vicious Animals. The owner or keeper of a dog, a wild animal, or an animal known to have vicious propensities is strictly liable for injuries caused by the animal, meaning that a showing of fault or negligence on the owner's part is not necessary. Liability does not extend if the injury results from a trespass or from teasing or tormenting the animal.

Animals Lacking Vicious Propensities. An injury by an animal that is not a dog or wild animal and is not of vicious propensities creates liability for the owner or keeper if he or she is negligent in keeping the animal. Negligence often hinges upon whether the owner or keeper could have anticipated the occurrence that resulted in the injury and failed to take corrective action. If so, the owner will be deemed negligent for not having taken steps to prevent the harm.

However, an owner or keeper is not negligent if the animal is in a place where it has a right to be, and a visitor invades that place. For example, liability will not attach to the owner for harm caused by an animal enclosed in a stall or a pen if a visitor willingly enters the stall or pen.

Equine. Equine activities pose unique liability questions for the property possessor. Is the possessor liable for injury to a person taking riding lessons on the possessor's property? Ohio's Equine Activity Statute⁴, enacted in 1996, addresses the issue of harm sustained as a result of the inherent risks of equine activities. The statute provides immunity for any person who provides, sponsors or organizes a facility for equine activities, or an operator, promoter, or instructor at an equine facility if the harm results from a danger or a condition that is an integral part of an equine activity. Such inherent dangers include the propensity of an equine to behave dangerously, the unpredictability of an equine's reaction to sounds or other animals, or hazards such as surface or subsurface conditions.

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. Negligence 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 resulting injury. For example, where a possessor has granted a neighbor permission to cut wood from the wood lot and the neighbor decides also to take a look around the barn, the possessor will not be liable if the neighbor is injured in the barn. Likewise, if a customer of a farm market enters a door that is posted "Keep Out - Personnel Only" and is then injured in the restricted area, the possessor is not liable. In both instances, the visitor exceeded the scope of the possessor's invitation or permission.

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. In this case, Ohio law apportions liability for the injury according to each party's degree of negligence. The judge or jury determines the portion of the injury that can be attributed to the possessor's breach of duty, and the portion of the injury that can be attributed to the visitor's own negligence.

Recreational User Statute. A possessor may use the Recreational User Statute, explained earlier in this publication, as a defense to a legal action if the possessor proves that:

1. The possessor gave the visitor permission to use the property.
2. The possessor did not receive a payment or any benefit for the visitor's use of the property.
3. The use of the property is "recreational."

Note that the statute applies only on nonresidential property, which raises a gray area for farmland that contains a residence.

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.
- Utilize Ohio's Recreational User's Statute. Where visitors seek to use nonresidential property for recreational purposes such as hunting, fishing, hiking, and camping, the possessor should ensure that the Recreational User's Statute⁵ is applicable. The following elements must exist: the possessor grants the visitor permission to use the property, the possessor receives no benefit of any kind for the use of the property, and the use is "recreational," defined by the statute as hunting, fishing, trapping, camping, hiking, swimming, or engaging in other recreational pursuits.
 - 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.

Conclusion

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:

1. What types of visitors do I have on the property?
2. What duty of care do I owe the visitors?
3. Have I fulfilled my duty of care by eliminating or warning of all dangers?
4. What more can I do to limit liability?

The chart on the next page summarizes the types of visitors to farm property and the appropriate duty of care for each visitor.

Types of Visitors to Farm Property and the Duty of Care for Each		
Status of Visitor	Examples	Possessor's Duty
Invitee	Customers U-pick customers Clients Salespeople Delivery persons	Discover and eliminate all known and unknown dangerous conditions, or Warn of all known and unknown dangerous conditions.
Licensee	Firewood cutter, with permission	Eliminate known dangerous conditions, or Warn of known dangerous conditions.
Social guest	Guests at social gathering	Eliminate known dangerous conditions, or Warn of known dangerous conditions.
Recreational User	Hiker Hunter	No duty if meets Ohio Recreational User's Statute ⁶ .
Known Trespasser	Without permission, possessor aware of	Eliminate known dangerous conditions, or Warn of known dangerous conditions.
Unknown Trespasser	Without permission, possessor unaware of	Refrain from harming by willful conduct.
Child Trespasser	Without permission, presence foreseeable	Protect from actively dangerous instrumentalities.

The purpose of this publication is to provide accurate information on the subject matter. In providing this information, the author and The Ohio State University do not intend to offer legal or other professional services. The reader should seek the services of a competent attorney if legal advice is necessary.

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Fact Sheets for Managing Agri- and Nature-Tourism Operations

Safety and Risk Management

by Desmond Jolly

Agricultural tourism can be a mutually beneficial exchange between agriculturists and urban residents. It can help agriculturalists learn more about urban concerns, while enabling urban residents to learn about farming and enjoy nature. It can also increase farm income if a fee is charged for farm visits or if products are sold to visitors. However, farm visits imply risks and potential liability to farm owners, should accidents occur that result in injuries to visitors. There is a need, therefore, to pursue prudent risk management strategies to minimize your liability exposure.

Safety is your first priority when entertaining visitors to your farm or ranch or when consumers visit your operation to participate in picking or other farming experiences, including farm tours.

Your visitors' safety is largely your responsibility. Review the following suggestions as a guide to assessing your own farm or nature tourism operation for potential hazards and to prepare for a safe, enjoyable visit to your farm, ranch or nature operation.

Managing and Reducing Risks

One essential tool to manage risk is liability insurance. Before hosting groups of visitors or planning a public event, check with your insurance agent about the adequacy of your liability coverage. An event insurance rider may be necessary.

- Identify the specific areas that guests will visit; the activities in which they will participate, how they will be supervised, and the safety precautions you will take, and any rules you will need to post. For some activities (horseback riding, for example) a "hold harmless agreement" may be a good idea. A "hold harmless" agreement indicates that the visitor is willing to assume responsibility for certain risks. It does not, however, totally absolve you of a certain level of responsibility for the health and safety of your visitors.



Clearly identify the areas open to farm visitors.

- Plan for Emergencies. Keep a well stocked first aid kit handy. Be sure knowledgeable people are on staff that have CPR and first aid skills. Develop an emergency plan for dealing with natural disasters such as an earthquakes, floods, and fires.
- Suggest that visitors wear appropriate clothing such as closed-toed shoes (tennis shoes or boots, but not sandals). Long pants are recommended for certain activities.
- When you brief visitors, explain that you operate a working production facility. As such, certain hazards come with the territory (uneven ground, insects, climate, farm odors) and visitors must accept those risks and exercise reasonable caution.
- Clearly demarcate "off-limit" areas and specifically designated public areas. Rope off or block access to other areas.

Facilities and Equipment

- Parking: Most counties require that cars park completely off the paved road. Do you have adequate space for the expected number of vehicles?
- Buses: If buses must park away from your farm, plan for a drop-off and loading area.
- Bathrooms: Do you have clean, well stocked, public restrooms in good operation? If you are expecting a large number of visitors, consider renting portable units.
- Security: Depending on the event, you may want to employ additional help to ensure that guests do not put themselves or your farm operation at risk.
- Ladders: Store ladders away from trees and public spaces to eliminate the temptation to climb. This is particularly important with regard to young people.
- Tractors and Equipment: Park tractors and equipment within eyesight (if desired), but away from the visitors' area. Agricultural equipment fascinates people; however, the tractor often becomes a climbing object for children (even when they are supervised by adults). Discuss tractor safety and instill respect for your equipment. Never allow visitors to drive farm equipment.
- Pest Management Materials: Pesticides, herbicides, and other farm management products should be safely stored, in a secure location, preferably away from public view.
- Shops and repair facilities are among the most hazardous places on the farm and should generally be off-limits to the public. Close the



Park tractors and farm equipment within eyesight.

doors and/or place a rope across the entrance with a "Do Not Enter" sign. Have farm personnel check these areas often.



Consider animal well-being first when choosing farm animals for public interaction.

Livestock and Animals

General concepts: All interactions between animals and guests should be supervised by farm staff. Animals will behave differently around a crowd of people. They should be penned or confined for viewing, with limited, controlled access for petting. Carefully select your most healthy, "user-friendly" animals for public interaction, but remember that animal well-being comes

first. Give adequate attention to odor, ventilation, manure, fly, and pest control in the visitor area.

- Pets: Ensure that only very friendly, social dogs will be near the public. However, warn visitors of a puppy's sharp teeth. Even friendly dogs can do damage.
- Cats and kittens: Be wary of their sharp claws and teeth.
- Small livestock: Goats and sheep are generally more widely used as petting animals. As ruminants with no top front teeth, they can be handled more safely than a horse with top teeth. Also, they are smaller and lighter if they step on a child's foot.
- Poultry: Geese can be very aggressive. Chickens, ducks, and other poultry may be fed. However, to limit the stress on the animals, be careful to rotate them.
- Cattle and calves: Restrain any cow that will be handled, preferably in a grooming chute. Calves should be controlled. Hand milking is not recommended.
- Horses and ponies: Warn visitors that animals may bite. Horse and pony riding requires special rules and insurance. Consult your agent.
- Post a "Please wash your hands after handling animals" sign.
- Provide hand washing facilities, hand wipes, or sanitizing hand cleaner in a convenient area.



Water is a natural temptation for small children. Use ropes or fences to prevent access.

Lagoons and Ponds

- Water is of special concern because of its attraction to children. Make sure that no visitor will be near water (secure with temporary fencing, cones and/or ropes). Do not trust parents to watch their children.

Hayrides

- Hayrides are popular with farm visitors, but safety precautions need to be taken. Also, additional insurance may be necessary for this activity. Establish a maximum rider load that provides safe seating for all occupants.



Check on additional insurance necessities before initiating hayride activities.

- Insist that participants follow the rules (no smoking, stay seated, legs away from wheels). The tractor speed should be no faster than an adult can jog. If there are problems, stop immediately.
- Check your route regularly for potholes, irrigation flooding, and other hazards that may change daily.

This fact sheet was produced by Desmond Jolly, Cooperative Extension agricultural economist and director, UC Small Farm Program; and Denise Skidmore, member of the Agriculture and Nature Tourism Workgroup.

Sample Hold Harmless Agreement

**RELEASE AND ACCEPTANCE OF RESPONSIBILITY
AND ACKNOWLEDGMENT OF RISKS**

ACKNOWLEDGMENT OF RISKS I understand and acknowledge that the activity that I am about to engage in bears certain known risks and unanticipated risks which could result in injury, death, or damage to myself, my property, or to other third parties. I understand and acknowledge those risks may result in personal claims against _____ or claims against me by other third parties.

ACCEPTANCE OF RISK AND RESPONSIBILITY - Being aware that this activity entails risks of injury to myself and to third parties as a result of my actions, I agree to accept and assume all responsibility and risk for injury, death, or damage to myself or to my property arising from my participation in this activity. I agree, covenant, and promise to accept and assume all responsibility and risk for injury, death, or damage to other third parties and their property arising from my participation in this activity. My participation in this activity is purely voluntary and I elect to participate in spite of the risks.

RELEASE - I hereby voluntarily release _____, its agents or employees, and all other persons or entities from any and all liability, claims, demands, actions or rights of action, which are related to or are in any way connected with my participation in this activity, including specifically but not limited to the negligent acts or omissions of _____, its agents or employees, and all other persons or entities, for any and all injury, death, damage to myself or to my property. I further agree, promise, and covenant to hold harmless and indemnify _____, its agents or employees, and all other persons or entities from all defense costs, including attorney's fees, or from any other costs incurred in connection with claims for bodily injury or property damage which I may negligently or intentionally cause to other third parties in the course of my participation in the activity. I further agree, promise, and covenant not sue, assert or otherwise maintain or assert any claim against _____, its agents or employees, and all other persons or entities, for any injury, death or damage to myself or to my property, arising from or connected with my participation in this activity or from any claim asserted against me by other third parties. In signing this document, I fully recognize that if anyone is hurt or property is damaged while I engage in this activity, I will have no right to make a claim or file a lawsuit against _____, or its officers, agents, or employees, even if they or any of them negligently caused the bodily injury or property damage.

EFFECT OF THIS RELEASE AGREEMENT - I understand and acknowledge that by initiating and/or signing this document I have given up certain legal rights and/or possible claims which I might otherwise assert or maintain against _____, its agents or employees, and other persons, entities, including specifically, but not limited to, rights arising from or claims for the acts or OMISSIONS, negligent in any degree, of _____, its agents or employees, and all other persons or entities.

I understand and acknowledge that by initiating and/or signing this document, I have assumed responsibility and legal liability for the claims or other legal demands, including defense costs, which may be asserted by spectators or other third parties against me as a result of participation in this activity. I understand that this is the entire Agreement between myself and _____, its agents or employees, or agent of ___ or by me. My signature below indicates that I have read this entire document, understand it completely, and agree to be bound by its terms.

SIGNATURE _____

SIGNATURE OF PARENT OR GUARDIAN (under 18) _____



4649 Sunnyside Ave N, Room 120
Seattle, WA 98103
TEL 206-633-0451
FAX 206-633-0450

HOLD HARMLESS AGREEMENT SEATTLE TILTH'S HARVEST FAIR

Organization

Representative

I hereby agree that Seattle Tilth and the City of Seattle shall not be responsible for any damage, injury or theft that may occur to participant listed above or their representative(s) during Seattle Tilth's Harvest Fair to be held September 9, 2006. The above named representative hereby releases Seattle Tilth and the City of Seattle from and agrees to hold harmless against all claims for any loss, damage, or injury.

Signature

Date

Family Form

**VOLUNTEER ASSUMPTION OF RISK,
RELEASE OF LIABILITY AND INDEMNITY AGREEMENT FOR:
SECOND HARVEST FOOD BANK
Orange County Harvest
426-A West Almond Avenue, Orange, CA 92866**

Adult Gleaner(s) _____
Address _____
City _____ Zip _____
Telephone _____
Date of Gleaning _____

Group Name _____
First Time Gleaner Yes ___ No ___
Where did you hear about O.C. Harvest
Friend ___ Newspaper ___ School ___ Church ___
TV/Radio ___ Other _____

I, the undersigned, an adult 18 years or over, and any minor(s) listed below, hereby request to participate in the Gleaning/Harvesting Project (GHP). I am aware that participation in the GHP involves farm work which includes, among other things, exposure to the elements, farm tools, and agricultural chemicals. I understand that such participation presents a risk of injury, and I agree to assume any and all risk for injuries arising out of, or related to, participation in the GHP and understand that the Released Parties (as such term is defined below) shall NOT be responsible or liable for any injury, damage, loss or expense to me and/or my property incurred as a result of my participation in the GHP.

As a condition of participation in the GHP, on behalf of myself, and my successors and assigns, I hereby agree to forever release, discharge, acquit, hold harmless and indemnify, the Council of Orange County, Society of St. Vincent de Paul, Second Harvest Food Bank, Orange County Harvest, their affiliates and their respective members, partners, principals, shareholders, directors, officers, agents, employees, volunteers, and representatives (including, without limitation, any farmer or other landowner, landlord, land manager or tenant who grants access to farmer's property for purposes related to the GHP) and their respective successors and assigns ("Released Parties"), from any and all charges, complaints, claims, demands, obligations, damages, actions, causes of action, suits, rights, costs, losses, debts expenses (including attorney's fees and costs) liabilities, and indebtedness, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated arising from, under, or related to, any act or omission of any of the Released Parties, or otherwise in any way related to, or arising from, participation in the GHP ("Released Matters"). I acknowledge and agree that the releases made herein constitute final and complete releases of the Released Parties with respect to all Released Matters, and that by signing this Agreement, I am forever giving up the right to sue or attempt to recover money, damages or any other relief from the Released Parties for all claims I may have with respect to the Released Matters (even if any such claim is unforeseen as of the date hereof). I understand California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

I, being aware of Section 1542, hereby expressly waive any and all rights I may have thereunder and do so understanding and acknowledging the significance and consequence of such specific waiver.

Please print minors names below: (or n/a)

Adult/Parent signature Date

Adult/Parent signature Date