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# Agritourism Liability

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## Overview

Laws governing the treatment of animals were first passed in 1867 and spearheaded by England, followed by other states into the United States at the level. The laws, while similar, vary significantly.

*Note: Recently added resources are posted in red.*

## Major Statutes

Animal Health and Disease

Animal Welfare Act, 7 U.S.C. §§ 2131-2159

Fishery Conservation and Management, 16 U.S.C. §§ 1801-1891

Endangered Species Act, 16 U.S.C. §§ 1531-4

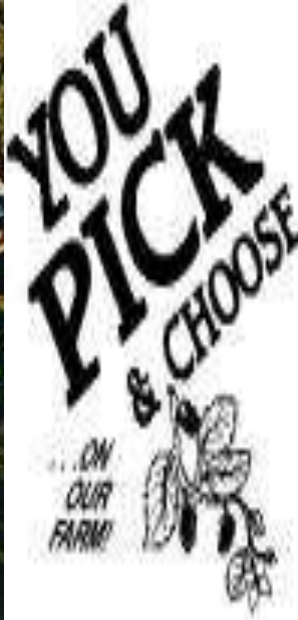
Fish and Wildlife Conservation Act, 16 U.S.C. §§ 2901-2912

Horse Protection Act, 15 U.S.C. §§ 1821-1831

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# Outline



- Introduction
- Landowner Liability for Business Invitees
- Agritourism Statute
- Planning & Insurance

# Introduction



- There is no such thing as 100% liability protection
  - Car example...
- Agritourism Statute – covered later by another speaker

No liability “tool” is perfect so it is important to use a mix of “tools” to craft the best protection to fit your individual agritourism venture.

# Landowner Liability for Business Invitees





# Premises Liability



- Premises liability is based on the notion of negligence
  - The failure to exercise the care that a ***reasonably prudent person*** would exercise in like circumstances

**DUTY**

**BREACH**

**CAUSATION**

**+**

**DAMAGES**

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**NEGLIGENCE**

# Liability Issues



- 3 Categories of People on Your Premises
  - Trespasser (2 types)
    - ✦ Lowest duty of care – No wanton harm
  - Licensee
    - ✦ Higher duty of care than trespasser, but less than invitee
  - **Invitee**
    - ✦ Highest duty of care

# Liability Issues: Invitee



- Invitee

- Person who is invited upon the premises in order to conduct business with the possessor
- Came on the land for *your* benefit
  - ✦ Customers on farm or at your stand
  - ✦ **Employees**
  - ✦ Students
  - ✦ Business visitor

# Liability Issues: Invitee



- Your duty:
  - Highest duty of care
  - A general duty to use ordinary care to keep the premises reasonably safe for the benefit of the invitee.
  - Typically you show these people the most concern anyways (i.e. “the customer is always right”)
  - But what about employees?
    - What kind of concern are they typically shown? What kind of jobs do they typically perform?
    - This means making sure your employees have safe equipment, facilities, proper training, etc.

How does a store differ from an agritourism operation?



# Agritourism Statute



**BRIEFLY SINCE THIS WILL BE COVERED  
LATER**

# Agritourism Statutes



- The purpose behind the agritourism statutes is to address the #1 concern of people wishing to start an agritourism operation...liability protection.
- Because negligence is the main cause of action that they face the agritourism statutes typically work by codifying the “assumption of risk” doctrine.
  - This is why football players cannot sue one another for battery

# Agritourism Statutes- Limits on Liability



- In Louisiana:

- A participant “assumes the inherent risk of an agritourism activity by engaging in the agritourism activity.”
- (4) “Inherent risks of agritourism activity” means those conditions, dangers, or hazards that are an integral part of an agritourism activity, including surface and subsurface conditions of land and water; natural conditions of vegetation; the behavior of wild or domestic animals; those arising from the form or use of structures or equipment ordinarily used on a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation; and the mistakes or negligent acts of a participant that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.
  - ✦ La. Stat. Ann. § 9:2795.5

**Notice that there are loopholes to get around this...**

# Insurance and Planning





# Other Steps to Reduce Risk



- A business organization and a liability statute is only part of the answer!
- Other steps that can be taken to reduce risk are:
  - Agritourism Planning
  - Insurance

# Agritourism Planning...Why this example?



- Planning resources:
  - <http://nationalaglawcenter.org/readingrooms/agritourism/>
- There are many resources that provide things to think about BEFORE starting a new business venture.
  - Learning from your mistakes is important, but also learn from the mistakes of others because you will never live long enough to make them all yourself.

# Agritourism Planning



- Helpful hints:
  - Mark boundaries carefully (next slide)
  - Set up an inspection schedule
    - ✦ Pros and cons of this approach
  - Use information from the inspection to provide invitees with a written warning of the dangers.
    - ✦ If they cannot be fixed of course
  
- Think through things carefully and consult other people before making changes!
  
- What is one of the most dangerous agritourism activities?

E1170Rd

E1170Rd

E1170Rd

E1170Rd

Gate



Rumley Oil & Gas

Tree Stand



County Street 2720

Gate

County Street 2720



# Restricting Access to Parts of Your Property

- Business Invitees do not need access to everything
- The smaller the area that you confine them to the easier it is to maintain it

Be careful what you use to “fence” off the rest of the property!



# Insurance



- Who should purchase it?
  - Farmer/agritourism operator
- Who should have their name on the policy?
  - Business entity or you?
- What type of insurance do they have?
  - Many common policies (general farm and homeowners) may not provide protection.

Example: Shooting accident in PA

# Insurance



- Make the insurance agent aware of any changes and that they are covered by the policy (in writing)
- Creativity might be great for business, but terrible for liability!



# Insurance Tips



- If possible have them see the farming operation in person before buying a policy
- Check in yearly to see if coverage has changed
- Identify the exclusions

## **Get everything in writing!**

- Your agent might change
- They will not be able to remember every conversation that they had with you

# Summary



- No method provides 100% liability protection
- Having a strong mix of the different protections is important
- How comfortable you are with risk will help you to decide how much protection is “enough”

Questions?



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