



UNDERSTANDING LIABILITY ISSUES

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One of the most frequent questions I am asked as an attorney is, “What can I do to better protect myself from liability on my farm?” This may appear to be an overwhelming topic as the ways someone may be injured on a farm seem to be endless, but generally, farm liability can be summed up in two major categories: personal liability and premises liability. Each type of liability has its own set of rules, but it is also important to point out you are not automatically liable simply because an accident or injury occurs on your farm.

Personal Liability

Personal liability stems from actions you (yourself) or any of your employees, might take. This could include situations such as accidents on or around farm equipment, spray drift issues, environmental issues such as manure or nutrient run off, etc. The law identifies two major categories of personal liability: liability from a violation of a regulation or law, and negligence. The violation of a law is fairly straight forward—if you break a law you are liable for those actions. Negligence on the other hand is much more difficult to pin down. Generally defined, negligence is acting in any manner contrary to what a “reasonable person” would do.

So, what is a “reasonable person”? This is hard to define and is typically determined on a case-by-case basis. I typically tell people that a “reasonable person” is a perfect person, meaning they do everything expected of them. For example, if you are driving a piece of large equipment down the road, people would expect you to have flashing lights and slow moving vehicle signs on your equipment. They would expect you to be competent and skilled at operating your equipment, and to keep your equipment well maintained. All those things you know you should be doing, but really don’t feel like doing, are the sorts of things that can get you in trouble for negligence. Negligence may be the most common form of liability a farmer might face, especially regarding the operating of equipment on the road. However,

you are not automatically negligent simply because you or your equipment were involved in an accident. Negligence must be proven in a court of law and even if you are found negligent, the other party must still prove they are entitled to be compensated for their injury, and to what extent.

The best thing you can do to prevent personal liability is to be as careful as possible while operating your farm so you can show you are acting in a reasonable manner. Keep good business and maintenance records and be sure you have adequate liability insurance. Every farmer should know how much liability insurance they have and whether it covers the types of activities performed on their farm. Although liability is not automatic, the process of proving your case at trial can still cost thousands of dollars even if you are successful in defending yourself from liability. Liability insurance will help prevent those costs should the need arise.

Premises Liability

Another major concern with farmers is the liability exposure they may have when someone comes onto their land and is injured. When thinking of premises liability it is important to keep in mind there are three general classes of people who may come onto your property and your responsibility to each varies.

Trespassers

Generally a land owner has no responsibility for keeping trespassers safe, and is not liable for any injury they may sustain on his property. This means if someone is walking across your field without permission and falls in a washout and breaks his/her leg, you are not responsible for their injury. The only thing you cannot do in the case of trespassers is intentionally harm them while on your property. There is an exception for child trespassers. Generally, you have an obligation to remove or remedy any man-made objects that may injure a child if you are aware they are trespassing on your property.

Licensees

A licensee is anyone who is on your property, with permission, solely for their own benefit. This would also include social guests. For example, if the neighbor is on your property cutting firewood, he would be a licensee. You do not have a responsibility to protect a licensee from any dangers on your property, but you do have the responsibility to warn the individual of any dangers you are aware of.

Invitees

An invitee is anyone who is on your property for your own benefit. This may be a paying customer at your You-Pick orchard, or your rental house tenant. Because you are receiving monetary compensation you have a higher responsibility to keep these individuals safe. With invitees you have a responsibility to inspect your property and repair any dangerous conditions. This may mean replacing the loose hand-rail at your rental house, or repairing any washouts in your orchard or pumpkin patch. If it is not possible to repair the dangerous situation then you have a responsibility to prevent access to it by fencing off the area and providing warning signs.

EXCEPTION: It is important to point out there is a specific exception in Ohio law for recreational users on your land including hunters, fishermen, ATV or snowmobile riders, swimmers, etc. Ohio law states you have no liability for injuries sustained by recreational users on your land regardless of whether you received payment from them or not.

Understanding how to prevent personal and premises liability issues on your farm, as well as carrying adequate liability insurance can help bring peace of mind that your assets are secure, and your farm will be there to pass on to the next generation. ■

This article is intended to provide general legal information, and should not be construed as legal advice. Individuals should seek the advice of a competent attorney regarding their own individual circumstances.