Premise/ Livestock Liability Issues
Disclaimer

• This presentation is solely intended to provide legal information to the public. Nothing from this presentation is intended to provide legal advice. The legal information in this presentation is simply general information about the law. This presentation does not in anyway form an attorney client relationship as the purpose is meant solely to educate the public.
Introduction

• The Agriculture Law Education Initiative provides information and resources to Maryland agriculture – helping Maryland farmers and allied industries understand the law.

• My name is William Pons and I am the program manager for the Agricultural Law Education Education Initiative. I am also a graduate of the University of Maryland Law School (December 2012).
Premise Liability Basics

• You can never eliminate all of your liability, but you can greatly limit your exposure and potential costs!

• You have a ‘Duty of Care’ to each individual that comes on your land.
Duty of Care

• Duty of care is “[a] legal obligation that is owed or due to another that needs to be satisfied.” (Black’s Law Dictionary)

• Your duty of care starts the instant a 3rd party enters onto your land or farm.
Duty of Care Example

• Imagine a group of hikers spot a pond on the other side of your pasture.

• As they make their way across your pasture to get to the pond, one of the hikers steps into a hole and breaks their leg.

• The injured hiker is not threatening to sue you for her injuries. What do you do?
Answer

• First, contact an attorney! If you do not have an attorney find one.

• Second, realize that the duty of care or your legal obligation that you owe will depend on a variety of things that change depending on the facts of the situation.
Overview

• Owning or leasing farmland can create liability risks associated with individuals coming onto your land (whether or not they are invited)

• There are 3 classifications visitors fall under:
  1. Trespasser
  2. Licensee/ Guest
  3. Invitee
Trespasser

• A trespasser is an individual who enters or remains on your land without your consent.

• Under common law, you as the landowner owe a trespasser only a duty to refrain from *willful or wanton conduct*.
Duty of Care for a Trespasser

• The only duty as stated above is to refrain from willful or wanton injury.

  ➢ **Willful Conduct**—is conduct that is “performed with the actor’s actual knowledge or with what the law deems the equivalent to actual knowledge of the peril to be apprehended, coupled with a conscious failure to avert injury.” (Doehring 1989).

  ➢ **Wanton Conduct**—is conduct “performed with reckless indifference to its potential injurious consequences.” (Doehring 1989).
Example of Willful or Wanton

- You are aware that the high school cross-country ski team cuts across your land to get to a public trail to practice. To prevent them from doing so you set-up a cable that you set specifically at a height just above ankle level. A member of the cross-country ski team unaware of the cable you put up skis into the cable and falls down breaking his arm and ankle.

- This is likely an example of willful and wanton injury and breach of your duty of care.

- However, if you were to build a 10 foot wooden fence to keep out the skiers and they attempt to climb over the fence and fall injuring themselves. You would likely not be found liable for the injury to the skier.
Licensee/ Guest

- A licensee is a person who is privileged to enter or remain your land only by virtue of your consent.

- Under common law, you as the landowner must refrain from willful or wanton injury to the licensee and must give reasonable warning of any concealed dangers on the property.
Duty of Care for a Licensee

• As owner of the land, you have a duty of care to make a licensee aware of any natural or artificial conditions of your property if you know of a condition or realize that the condition poses an unreasonable risk to the licensee. Additionally, you have a duty of care to your licensee to warn them of any condition or risk they might not discover that has the potential to injure them.

• A licensee can become a trespasser if they go outside the boundaries of their invitation.

- Example: You allow your neighbor access to your pond to fish and swim. While at the pond, your neighbor decides to explore the unfinished treehouse you are building. The neighbor has likely become a trespasser.
Invitee/ Business Invitee

• An invitee is a person that you have invited to enter or remain on your property for your economic benefit. Such as a customer that enters a store.

• Under common law, you as the landowner owe a duty to maintain the property in a reasonably safe condition and has a duty to protect an invitee from any conditions that can result in injury.
Duty of Care for an Invitee

• An invitee is owed the highest duty of care of the three designations.
  ➢ The landowner has a duty to protect them from unreasonable risks and to keep the property reasonably safe.
  ➢ As a landowner you should inspect your property for dangerous conditions, warn invitees of dangerous conditions, and repair existing dangerous conditions.

• However, it should be noted that invitees can become trespasser or licensee if they do something that is outside of what is normally allowed for an invitee
  ➢ Example: You operate a bed and breakfast on your farm. Your guests would be considered invitees. If one your guests decides to climb onto the roof of the house one night to look at night sky and is injured. The guest would likely not be considered an invitee on the roof.
Livestock Liability

• What potential liability do you face when someone visiting your petting zoo or stables is injured by an animal?

• There are 2 types of liability with regard to injuries caused by domesticated animals.
  1. Strict Liability—can be found liable for damages without finding negligence
  2. Negligence
Negligence

- Negligence is failing to exercise the degree of care that a reasonably prudent person would use in a similar circumstance to avoid a foreseeable harm.

  Example: You own a horse farm and you have constructed a fence to keep the horse off the nearby road. Every night your fence is damaged by deer crossing your property. Although you are aware of this fact you fail to repair your fence and one day your neighbor is driving down the road and hits your horse which has wondered off your property.
Livestock and Negligence

• With regard to livestock, as an owner you should exercise reasonable care in controlling the animal and preventing harm from being cause by the animal.

• If a person is injured by your animal and you failed to exercise effective control of the animal in a situation where you would have been reasonably expected to prevent the injury. Then you will likely be liable under the theory of negligence.
Example of Negligence

• You operate a riding stable, where in addition to giving riding lessons you take clients on trail rides through your property. Today, your clients include a family of inexperienced riders and an old college friend. During the ride you and your college friend spend all the time speaking and since you are leading the ride you are unable to keep an eye on the family. Suddenly you hear a child scream and as you turn around just in time to see the horse carrying the family’s daughter buck her off. The girl has a broken leg and a large bruise on her head. Based on this fact pattern, this might be a case where you acted negligently.
Strict Liability

• Strict liability means that you have a legal responsibility for the injury or damages that have occurred even if you were not at fault.

• This means that even if you acted in good faith or took all precautions to prevent the injury or damage, you will still be found liable.
Livestock and Strict Liability

• As an animal owner you are strictly liable for injuries caused by your animal. However, the injured individual must show that the owner (you) knew or should have known that the animal that caused the injury had a natural tendency to commit the particular act.

• Same applies for livestock. Meaning the injured party must show that you, the owner of the animal, knew that the animal had committed a similar injury in the past or that the animal had a natural tendency to commit the kind of injury.
Example of Strict Liability

• Generally, the most common example of strict liability for animals are ‘dog bite’ laws which impose a strict liability on the owner of dog which had a history of biting people.

• Example: You allow visitors to feed your cows with feed they purchase from your store. One of your cows has been known to bit visitors. That same cow bites the hand of a visitor as they attempt to feed it. This is a case where you would possibly be strictly liable.
Questions?

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