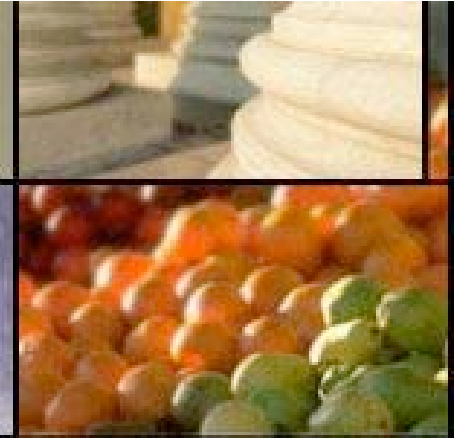


The National Agricultural Law Center



University of Arkansas
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***Legal Issues for Producers:
Liability and Food Safety***

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- National Agricultural Law Center
- Recommended Resources
- Role of Attorneys
- Concept of “Legal Liability”

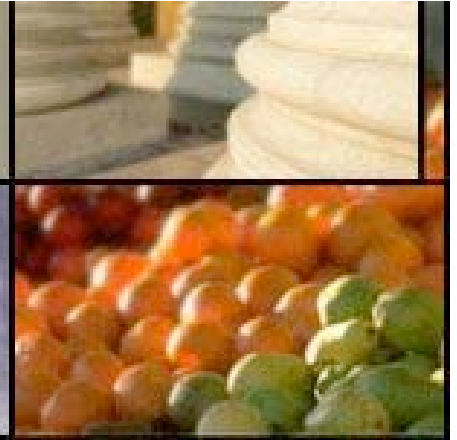
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***The Nation's Leading Source for
Agricultural and Food Law Research and Information***

Recommended Resource

The Legal Guide for Direct Farm Marketing,
by Neil D. Hamilton

Drake University Agricultural Law Center
Des Moines, Iowa 50311
(515) 271-2065

Role of Attorneys

Lawyers Can't live with 'em, can't live without 'em

→ An important part of engaging in any economic enterprise, including agriculture

Concept of Liability

What is “Liability”?

- The quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment

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II. Discussion

10 Areas of Focus:

- Premises Liability
- Recreational Use Statutes
- Business Organizations
- Nuisance/Right-to-Farm Laws

Discussion: 10 Areas of Focus (cont'd)

- Zoning Laws and Regulations
- Labor Issues
- Insurance/Disclaimers
- Food Safety
- Farmers Markets – Selected Issues

Premises Liability

- Person injured while upon the premises of another may bring a legal (i.e., negligence) action against the owner/controller of property
- Determination of liability of owner usually turns on the duty of care, if any, owed to the land entrant
- 3 common law categories: licensee, **invitee**, and trespasser

Premises Liability

- Licensee: One who goes upon the premises of another with the consent of the owner for one's own purposes and not for the mutual benefit of oneself and the owner
- Invitee: One induced to come onto property for the business benefit of the possessor of property
- Trespasser: One who intentionally and without consent or privilege enters another's property

Recreational Use Statutes

- State statutes that provide liability protection for owners of land who allow the public to make recreational use of the land
 - Statutes and how they are interpreted differ among jurisdictions
 - Every state has some type of recreational use statute
- Designed to encourage the opening of private lands to the public for recreational use

Recreational Use Statutes (cont'd)

- Certain statutory conditions must be satisfied in order to enjoy liability protection
- In general, key element is that the landowner must have permitted the injured party “free access” to the land for recreational purposes

Business Organizations

- Every business in every state operates under some type of business structure or structures
- Every business in every state faces the risks of incurring debt and/or being held personally liable in lawsuit
- Every business in every state incurs tax liabilities

Business Organizations

- Each type of business structure is a matter of state law (still subject to federal laws)
 - vary from state to state, with many similarities
 - subject to change within any given state
- Predominant factors in each are:
 1. Protection from personal liability
 2. Taxation

Business Organizations

1. Sole Proprietorship
2. General Partnership
3. Limited Partnership
4. Corporation
5. Limited Liability Company**

Nuisance/Right-to-Farm

What is a nuisance?

Basically, it is the interference of another person's quiet use and enjoyment of their property

→ flies, odors, dust, lights, traffic, customers, etc

Nuisance/Right-to-Farm

What are “Right-to-Farm” Laws?

A state law that limits the ability of people to bring a nuisance lawsuit against an agricultural operation that existed prior to the presence of the other landowner

→ If you were there first, comply with applicable laws, and are not acting negligently you are usually protected by the RTF law

Zoning Laws & Regulations

Basic Rule of Thumb:

Most likely, your land is subject to some type of zoning law that limits and/or protects how your land may be used

- With increased urbanization and new uses of land such as agritourism, zoning laws are even more important
- Very important in business planning

Zoning Laws & Regulations

- Know whether your property is currently zoned, and, if it is, how it is classified
- Determine what is permitted under that particular classification
 - Will that classification allow you to expand your business in years ahead?

Zoning Laws and Regulations

- Zoning is a matter of state and local (i.e., county) regulation, so you should contact the appropriate local land use authority for information
- Stay informed as a citizen about zoning hearings and participate in process

Labor Issues

Why are labor issues important?

- It is a principal factor in determining the possible liability of a producer who hires others to work on their operation
- Worker safety; wage and hour standards; work-related injuries/accidents
- Federal and state laws implicated

Labor Issues

- Main issue is determining whether someone is legally an “employee”
- Not all people who are hired to work are actually employees – so how can you tell?

(Remember, it might not be considered until after a problem arises)

Labor Issues

- On your farm at your invitation;
- Performing tasks that you identify;
- Subject to your **control**/instructions;
- Receiving financial benefit in exchange for labor performed;
- You can hire or terminate them;
- They believe they are your employees

Insurance

- One of the most important areas, with many unanswered questions
- Insurance is a necessity for business enterprises
 - liability protection/risk management (along with tools such as business organization)
- Needs to be tailored to types of risk in your operation – **Talk to Agent**

Insurance

- Two types of insurance policies most applicable:

1. Comprehensive farm liability policy

2. Commercial business policy

Insurance

- The farm liability policy is intended to provide liability coverage for accidents that occur on farm premises, so long as accident occurs in connection with what is considered “farming” under the policy
 - Think back to Premises Liability discussion
 - Is a farmstand that sells others’ produce as well as yours connected with “farming”?

Insurance

- The commercial business policy is written specifically for the type of business involved and is intended to provide liability coverage for the types of activities conducted in connection with the business

Note: In some instances, it might be beneficial to have a commercial business policy in addition to the farm liability policy

→ Agritourism

Food Safety

- Federal law can apply, but mostly state and local in the small farm context
- Primary distinction from legal and regulatory standpoint is “raw” versus “processed”
 - processed (i.e., value-added) generally triggers more legal and regulatory issues
- Sale of meat, poultry, eggs, and dairy products subject to extensive federal and state regulation

Food Safety

- Laws and regulations for processed food often:
 - Operate to define/limit what you can sell and to whom you may sell
 - Establish minimum guidelines for steps needed to prepare and sell certain foods
 - Require obtaining of license and subject operation to federal or state inspection

Food Safety

- Most important point to remember:

Contact and maintain communication with appropriate state and local officials

- They are there to provide assistance
- Provides a low cost way *to actually avoid* attorneys

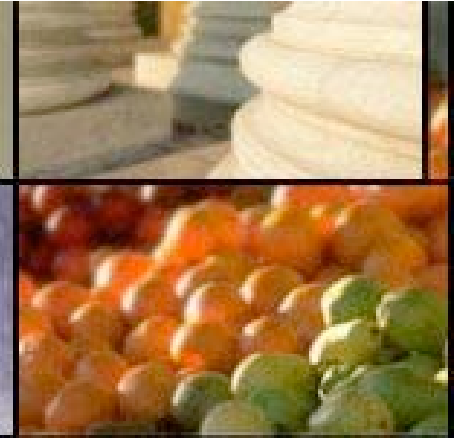
Farmers Markets – Selected Issues

- Is license needed to sell at a farmers market?
 - Not typically, unless processed food is involved
- Where can a farmers market be located?
- Who is liable for personal injury on farmers market premises?

Areas Not Discussed

- Contract law, including application of Uniform Commercial Code
- Animal cruelty laws
- Tax issues
- Food Stamps and other federal programs
- Institutional purchasing

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