

## How to Protect What is Yours: Legal Answers to One of Farmer's Toughest Questions

-PRESENTED BY-  
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## Who we are?

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## What Are the Goals?

- Make Ends Meet
- Use the Profits You Earn Wisely
- Protect the Wealth You Chose to Accumulate
- Pass the Accumulated Wealth on to the Next Generation

## Legal Challenges

- Tort Liability
- Contract Liability
- Asset Management
- Taxation
- Family Disputes

## Who Is Liable?

### Cattleman No. 1

While traveling on a state highway at night, truck driver collides with a herd of 20-25 cows, killing three (3) cows. Owner of the cattle had a habit of inspecting his fence at least once a week, but admitted his cows had previously strayed from his property. Cattleman's fence had a tight strand of barbed wire over the top of a sagging mesh ("hogwire") fence; the fence was approximately 46 inches tall. After the accident, owner discovered that his cows had torn down a portion of his fence and it appeared as though cows had been fighting and in the process tore the fence down.

### Cattleman No. 2

Logging truck collides with a 750-pound cow on roadway the day after cattle owner weaned calves. Owner checked the fence that separated the pasture from the road "regularly", but had no "system" in place for doing so and could not state when he last checked the fence. The fence along the road was 4 feet high and made of "hogwire" with 2 strands of barbed wire on the top. The farmer testified he had witnessed a 750 cow jump that type fence, but he had not personally had one of his cows get out in 10 years. After the collision, farmer walked the perimeter of the pasture and could not determine where the cow got out.

## The Law

- "No owner shall permit livestock to run at large on or to stray upon the public roads of this state or any property not belonging to the owner of the livestock, except by permission of the owner of such property." O.C.G.A. § 4-3-3
- "The mere fact that livestock is running at large permits an inference that the owner is negligent in permitting the livestock to stray; but when the owner introduces evidence that he has exercised ordinary care in the maintenance of the stock, that permissible inference disappears." John Hewell Trucking Co. v. Brock, 239 Ga. App. 862, 863 (1999).

## Other Liability Risks

- Vicarious Liability—Liable for Employee Acts
- Negligent Entrustment Claims
- Chemical Drift/Livestock Damage Cases
- Workers Compensation Claims
- “Farm Laborers” Claims
  - employer must give the employee warning of known equipment defects and risks
  - employee assumes the ordinary risks of employment

## Who is Liable?

### Farmer No. 1

A neighbor (Gene) who lived beside a storm-damaged corn field approached a farmer about harvesting the corn on “halves”. Using a tractor and trailer furnished by the farmer, Gene’s 16 year old son, Clayton, began harvesting the corn while Clayton’s 4 year-old nephew stayed in the field and played in the trailer under his grandmother’s (Gene’s wife) watch. The 4 year old boy later returned to Gene’s house across the road and stayed in the care of his aunt. The 4 year old boy slipped away from his aunt and crossed the road back to where his grandmother and uncle were harvesting. While the tractor was stationary, the child became entangled in the PTO, receiving multiple injuries.

### Farmer No. 2

Farmer hired migrant labor to help work in his packing shed. Because the farmer had instructed the person responsible for recruiting migrant labor that children were not allowed in the packing shed, the recruiter set up a nursery for the children of the laborers approximately 100 yards from the shed. One day, several of the migrant children came into the packing shed since the children were outside playing when it began to rain. While in the shed, several of the children began crushing cans on a conveyor belt. While placing a can on the conveyor belt, a 3 year old boy got his arm caught. The boy’s arm was instantly amputated by the conveyor belt.

## The Law

“A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if

- (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and
- (b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and
- (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and
- (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and
- (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.”

Gregory v. Johnson, 249 Ga. 151, 154 (1982).

## Other Premise Law

- Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe. O.C.G.A. § 51-3-1
- (a) A licensee is a person who:
  - (1) Is neither a customer, a servant, nor a trespasser;
  - (2) Does not stand in any contractual relation with the owner of the premises; and
  - (3) Is permitted, expressly or impliedly, to go on the premises merely for his own interests, convenience, or gratification.
- (b) The owner of the premises is liable to a licensee only for willful or wanton injury. O.C.G.A. § 51-3-2
- An owner or occupier of property owes no duty to trespassers or licensees, even when they are small children, other than to refrain from willfully or wantonly injuring them. Brazier v. Phoenix Group Mgmt., 280 Ga. App. 67 (2006).

## The Importance of “Notice”

- Limits Liability
  - To employee if you know of risk
  - To licensee if you know of defect
  - To insurer of accident/incident
- Creates liability
  - Livestock escape
  - Careless employee
  - Waiver of contracts

## Business Entities

- Limited liability
- Shareholder’s agreed-upon investment
- Estate planning
- Continuity of the Farm Business
- Insurance, Retirement, Death Benefits
- Practical Considerations

## Choice of Business Entity

- None
- Corporation
- Limited Liability Company
- Partnerships
- One Key Question:
  - What should happen to farm if I die?

## What is a Will, and Who Needs One?

- Written directions regarding property at death
- What if I die without a will?
- What can you do with a will that's better than no will?
- Property controlled by will

## Wills

- Should I “avoid probate”?
- Isn't it just a form – why can't I do it myself?
- If I move from another state, should I re-do my will?
- POA's / Living Will
  - Financial
  - Living Will/ DHCPOA/ Advance Directive for Health care

## Other Estate Considerations

- Trusts
- Life Insurance
- Estate Taxes
  - IRC § 2032A: Family Farms



**Questions?**