

Premise/Landowner Liability Seminar

Georgia Farm Bureau

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Topics

- Georgia's Premise Liability
- Statutory Protection for Landowners
- Business Organization
- Steps After an Incident Occurs
- Resolution/Litigation

The Nectarine Orchard

Farmer owns and operates several orchards and allows the public on his property to pick fruit from the trees for purchase. The farmer directed mother and adult daughter to an area on his farm to pick nectarines. As the daughter was walking between the rows of trees, her leg went into a hole up to the height of her knee, causing her to fall and fracture her right ankle. The daughter claimed she failed to see the hole, despite looking down for snakes, because it was covered by approximately one foot of grass. Farmer testified that the grass was cut once every 10-14 days and that paraquat was sprayed around the trees every 3-4 weeks. Farmer claimed he was never able to locate the hole where daughter was injured.

Georgia's Premise Liability

- Invitee
 - 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
- Licensee
 - Is permitted, expressly or impliedly, to go on the premises merely for his own interests, convenience, or gratification.
 - The owner of the premises is liable to a licensee only for willful or wanton injury.
- Trespasser
 - As to the trespasser, no duty arises of keeping the usual condition of the premises up to any given standard of safety, except that they must not contain pitfalls, man-traps, and things of that character.

The Duty Owed to Invitees

- While not an insurer of the invitee's safety, the owner/occupier is required to exercise ordinary care to protect the invitee from unreasonable risks of harm of which the owner/occupier has superior knowledge
- A duty of ordinary care to have the premises in a reasonably safe condition and not to expose the invitees to unreasonable risk or to lead them into a dangerous trap
- Duty includes inspecting the premises to discover possible dangerous conditions of which the owner/occupier does not have actual knowledge, and taking reasonable precautions to protect invitees from dangers foreseeable from the arrangement or use of the premises.
- Where a static condition is open and obvious condition and, therefore, could have been avoided in the exercise of ordinary care, there is no liability.

Robinson v. Kroger Co., 268 Ga. 735, 740 (1997)

Constructive Knowledge

- A premise Owner can show lack of constructive knowledge by demonstrating compliance with reasonable inspection procedures
 - A reasonable inspection procedure varies based on nature of business
- Constructive knowledge may be inferred by the absence of such procedures

The Impact of Children on Property

- Higher Standard
 - Because a child of tender years may be unable to appreciate a danger and, therefore, to have knowledge of the hazard equal to that of the owner/occupier, an owner/occupier may be held to a higher standard of care toward a child than toward an adult.
- Contributory Negligence
 - Under Seven
 - Between Seven and 14
 - Over 14

The Impact of Children on Property

- Negligent Supervision
 - As a general rule, a person who undertakes the control and supervision of a child, even without compensation, has the duty to use reasonable care to protect the child from injury.
 - The measure of duty of a person undertaking control and supervision of a child to exercise reasonable care for the safety of the child is to be gauged by the standard of the average responsible parent; such person is not an insurer of the safety of the child and has no duty to foresee and guard against every possible hazard. The measure of precaution which must be taken by one having a child in his care, who stands in no relation to the child except that he has undertaken to care for it, is that care which a prudent person would exercise under like circumstances.
 - Where parents are watching their child play on someone else's land and the parents are aware of a dangerous condition, it is the parents' duty, not that of the landowner, to ensure that the child avoids the danger.

The Impact of Children on Property

- Attractive Nuisance

“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).

Bullwinkle

Roy and Karl go to nearby farm to look at some Karl's cows. While on the farm, Roy and Kary "patted" some cows and discussed hunting and fishing. Then, they entered a field inhabited by "Bullwinkle", a ten-year old bull raised by Karl from the time Bullwinkle was a calf. While in the field, Bullwinkle approached Roy, knocked him down, and injured Roy's leg. Karl claimed Bullwinkle had never done that before, that the bull had been treated like a family pet, and was always gentle, even allowing children to scratch his head.

Domesticated Animals

- Livestock are not considered to be statutorily vicious animals.
 - Horses, Cattle, Sheep, Hogs, Goats
- An owner must have some knowledge of the animal's vicious or dangerous character before he can be held liable for an attack by that animal.
- Wild Animals Are Inherently Dangerous
 - Snakes, Bears, Monkeys

What is foreseeable?

- Uneven/Muddy Conditions
- Repeated Happenings (including criminal)
- Patrons Departure from Supervised/Marked Area
- Bumps on Hayrides
- Repeated Animal Bites/Kicks
- Spills Outside Concessions

Statutory Defenses

Agritourism Immunity

- A landowner who charges admission for a person who is 18 years of age or older to hunt or fish on the owner's property or to enter the owner's property for the purposes of agritourism shall be immune from civil liability for any injuries caused by the inherent risk associated with agritourism, hunting, or fishing activity, provided that:
 - (1) The landowner's conduct does not constitute gross negligence or willful and wanton misconduct;
 - (2) The landowner has posted at the main point of entry, if present, to the property a sign with a warning notice stating . . . on the sign in black letters, with each letter to be a minimum of one inch in height;
 - (3) The person who has paid admission to the landowner to enter such landowner's property to hunt, fish, or for the purposes of agritourism has signed a waiver of liability form stating that the person entering the landowner's property has waived all civil liability against the landowner for any injuries caused by the inherent risk associated with agritourism, hunting, or fishing activity.

Agritourism is a Limited Term

- The term "agritourism" means charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy.

Agritourism Warning

- "Warning
Under Georgia law, there is no liability for an injury or death of a participant at least 18 years of age in a registered agritourism activity conducted at this registered agritourism location if such injury or death results from the inherent risks of such agritourism activity. Inherent risks of agritourism activities include, but shall not be limited to, the potential of you to act in a negligent manner that may contribute to your injury or death and the potential of another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this registered agritourism activity."

Hunt and Fish Warning

- "Warning
Under Georgia law, there is no liability for an injury or death of a hunting or fishing participant at least 18 years of age conducted at this location if such injury or death results from the inherent risks of such hunting or fishing activity. Inherent risks of hunting or fishing activities include, but shall not be limited to, the potential of you to act in a negligent manner that may contribute to your injury or death and the potential of another participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this hunting or fishing activity."

Recreation Property Act

- An owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for recreational purposes.
 - "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites.
- **Exceptions:**
 - willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
 - For injury suffered in any case when the owner of land charges the person or persons who enter or go on the land for the recreational use thereof
 - O.C.G.A. 27-3-1(e) extends immunity to owner "who gives permission to another person to hunt, fish, or take wildlife upon the land with or without charge"

Willful or Malicious Standard

- Owner had actual knowledge that its property was being used for recreational purposes;
- Owner had actual knowledge that a condition existed involving unreasonable risk of death or serious bodily harm;
- The condition was not apparent to those using the property; and
- Owner chose not to warn users, in disregard of the possible consequences.
- Constructive knowledge is not sufficient, and no duty to inspect is imposed on the property owner.

Collins v. City of Summerville, 284 Ga. App. 54, 56 (2007)

Separate Fishing Immunity

- The owner or operator of any fishing location . . . shall not be liable for an injury to or the death of a participant resulting from the inherent risks of fishing
- Exceptions
 - (1) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the owner or operator and for which signs warning of the latent defect have not been conspicuously posted;
 - (2) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or
 - (3) Intentionally injures the participant.

Fishing Immunity Warning

- Signs shall be placed in a clearly visible location on or near the water and at the location where the fee is paid. The warning notice shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.
- Every written contract entered into by an owner or operator shall contain in clearly readable print the warning notice specified in subsection (b) of this Code section.
- Must Say:

WARNING

Under Georgia law, an owner or operator of a fishing location is not liable for an injury to or the death of a participant from the inherent risks of fishing, including but not limited to drowning, pursuant to Article 7 of Chapter 4 of Title 27 of the Official Code of Georgia Annotated.

Injuries from Equine and Llama Activities Immunity

- Any person shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities or from the inherent risks of llama activities
- Exceptions:
 - (1) (A) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury.
 - (1) (B) Provided the animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or llama activity and to safely manage the particular animal based on the participant's representations of his or her ability;
 - (2) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known
 - (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury;
or
 - (4) Intentionally injures the participant.

Equine Warning

- Must post and maintain signs which contain the warning notice . . . in a clearly visible location on or near stables, corrals, or arenas where equine activities are conducted.
- Shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.
- Every written contract entered into by an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine activity sponsor's business
- “WARNING
Under Georgia law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to Chapter 12 of Title 4 of the Official Code of Georgia Annotated.”
- Similar requirements for Llama Activities

Pick Your Own Farm Immunity

- The owner or operator of any farm specializing in pick-your-own agricultural products shall not be liable for an injury to or the death of a participant resulting from the inherent risks of harvesting agricultural products
 - (1) "Agricultural products" means Christmas trees, fruits, vegetables, pecans, nuts, horticultural products, and other such fresh farm products that are made available to the general public through pick-your-own farm operations.
 - (2) "Participant" means any person who enters the farm location, singly or with a group, for the purpose of harvesting fresh farm products from pick-your-own farm operations.
- Exceptions
 - (1) Owns, leases, rents, or otherwise is in lawful possession and control of the land upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the owner or operator;
 - (2) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury;
 - or
 - (3) Intentionally injures the participant.

Pick Your Own Farm Warning

- Every owner and operator of a pick-your-own farm operation shall post and maintain white signs which contain the warning notice in black letters, with each letter to be a minimum of one inch in height. Signs shall be placed in a clearly visible location near the entrance of the farm. Every written contract entered into by an owner or operator shall contain in clearly readable print the warning notice.
- The signs and contracts described in subsection (a) of this Code section shall contain the following warning notice:

"Under Georgia law, an owner or operator of a pick-your-own farm location is not liable for an injury to or the death of a participant from the inherent risks of harvesting agricultural products, pursuant to Article 7 of Chapter 14 of Title 2 of the Official Code of Georgia Annotated."
- Failure to comply with the requirements concerning warning signs and notices provided in this Code section shall not prevent an owner or operator from invoking the privileges of immunity provided by this article.

Liability Takeaways

- Identifying, Avoiding, and/or Eliminating Unreasonable Risks
- Creation of a Reasonable Inspection Procedure
- Compliance with the Applicable Pre-requisites to Statutory Defenses
- Responsiveness

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 Entities

- Sole Proprietorship
- Corporation
- Partnerships
- Limited Liability Company

If an Incident Occurs

- Obtain Medical Attention
- Report it to Insurer
- Take Photographs
- Make a Report
- Take Names/Witness Statements
- Correct Any Condition

A Claim

- Insurer may consider resolution
- Pre-suit alternative dispute resolution
- If suit filed
 - Personal Service
 - 30 days to answer
 - Six months of discovery
 - Pre-trial Motions
 - Trial
 - Appeal

Other Agritourism Issues

- Zoning
- Building Codes
- Nuisance
- Labor
- Property Tax Covenants
- Appropriate Insurance Endorsements

Questions?

Hall Booth Smith & Slover

- **Offices in Atlanta, Athens, Tifton, Albany, Columbus, Brunswick**
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