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FACT SHEET

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FARMERS' LIABILITY FOR ACTS AND INJURIES OF EMPLOYEES

Donald R. Levi and Kenneth Wolf*

Farm and ranch owners and operators, in hiring labor, may have a measure of increased legal liability arising from various aspects of the employer-employee relationship. The employer may be liable for the acts of employees *as well as* for injuries to employees .

The purpose of this publication is to provide information regarding some of the farm employer's liabilities for employees. Since only the general legal concepts are cited, this publication is not intended to replace the services of a competent attorney if an employer is faced with a specific problem.

LIABILITY FOR ACTS OF EMPLOYEES

Some circumstances under which a farm or ranch employer may be liable are as follows:

1. One of your farm workers kills a neighbor's cow with a rock in attempting to remove her from your corn field. Can you be required to reimburse your neighbor for the value of the cow?
2. Assume you give your farm manager $50 with instructions to buy two new tires from a local service station. If he keeps the money and has the tires charged to your account, can the service station owner force you to pay this bill?
3. You hire a pilot to spray a herbicide on your property. If the drifting spray damages your neighbor's cotton, are you liable?

The employer's liability under these three cases is determined by the *legal classification* of the person employed. Such persons may be grouped into three categories: *servants, agents* or *independent contractors.* These legal classifications are defined as follows:

1. If the employer has the right to direct and control the general manner in which the hired person performs his tasks, that person is a *servant.*
2. If a hired person has authority either to transact business or manage certain affairs for his employer, he is an *agent.*
3. An *independent contractor* is a person contracted to do a certain job according to his own methods.

Liability for Acts of Servants

A major factor affecting the legal classification of a hired person is the *degree of control* which the employer has over his employee. Of the three legal classifications, an employer has the greatest degree of control over the servant. The relationship of the employer to the employee is sometimes legally referred to as a "master-servant" relationship. A general farmhand who has little formal education or training to perform his duties and whose work is supervised by the employer may be classified as a servant.

Farm employers are legally responsible for injuries or damages caused by servants who are acting *within the scope of their employment* at the time the injuries occur. In the first case cited, the farm worker who killed the neighbor's cow would probably be classified as a servant. Although the employer may have expressly forbidden throwing rocks, he would still be liable if a jury decided the employee was acting within the scope of his employment at the time of the accident.[1]

*Associate professor of agricultural law, Texas Agricultural Experiment Station, The Texas A&M University System, and member of the State Bar of Texas; and Economist-agribusiness, Texas Agricultural Extension Service, The Texas A&M University System.

[1]See the case **Evans** v. **Davidson,** 53 Md. 245 (1879), where the court found the employer liable under these circumstances.

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This issue must be resolved by the particular jury hearing the case. Under certain circumstances this is a difficult task, and determination of the issue may vary.

Liability for Acts of Agents

The employer has a lesser degree of control over a person classified as an *agent*. The employer-employee relationship, in this case, is legally referred to as a "principal-agent" relationship. For example, a farm manager who makes business decisions for his employer could be classified as an agent.

An employer is responsible for his agent's acts committed *within the scope of his authority*. There are at least two distinct types of authority recognized — *express authority* and *apparent authority*. If the agent carries out *express* directions from his employer the employer is responsible for the agent's acts, since they are within the scope of the agent's express authority. For example, if the employer instructs his manager to buy tires for him, the employer is obligated to pay for them when the manager carries out these orders.

If the manager has had authority to purchase tires on credit on previous occasions, it would appear to the tire dealer that he is authorized to make this transaction again. Since the agent appears to be within the scope of his authority, the employer *may be* liable for his acts whether or not the employer authorized him to purchase the tires on credit.

If it is not clear that the agent has authority to make the transaction, the tire dealer is dealing with the agent at his own risk. If the agent does not have the purported authority the tire dealer must stand the loss. Thus, the dealer has a responsibility to contact the employer if he is in doubt. This is a legal area about which it is difficult to generalize; specific questions should be directed to your attorney.

Under some circumstances, a contract made by a person claiming to be an agent may be binding on the employer even though the purported agent had no actual or apparent authority to make such a contract. If the employer was aware of all the facts and, either by words or conduct, ratified the agent's act, then the employer is liable. This is another area requiring professional legal assistance.

Liability for Acts of Independent Contractors

An employer has the least amount of control over an independent contractor. The independent contractor is hired to do a certain job, and his employer has no control over the manner in which the job is done. As a general rule, an employer is *not* responsible for the negligent acts of an independent contractor.

There are important exceptions to the general rule in which the employer *can be* liable for the acts of contractors. These are as follows:

1. acting with negligence in selecting a contractor;
2. furnishing the contractor with faulty plans or specifications;
3. keeping the immediate area in which the contractor is working open for business; and
4. hiring an independent contractor to perform a task which is inherently dangerous.

If an employer selects a known incompetent as an independent contractor, the chances are increased that someone may be injured during the course of the job. Therefore, an employer remains responsible to others if he hires such an individual.

Secondly, if your building collapses you are liable for injuries to third persons if you gave the contractor deficient specifications.

You also remain responsible if you stay open for business during construction. An example might be: You hire someone to put a new roof on your business and remain open while the contractor performs this work. If a sheet of roofing falls on a customer and injures him, you are liable. Obviously this type of liability is more likely to occur in an urban business than on a farm.

The last exception recognizes some tasks to be inherently or intrinsically dangerous. An employer is fully liable for injury or damage if he delegates such tasks to a contractor. An example might be the aerial spraying of herbicides.[2]

Primary Liability

Even if an employer is held liable for an employee's conduct under circumstances such as those described, the *primary liability for the damage or injury is upon the employee.* That is, the employee must pay for such damages or injuries to the extent of his financial abilities.

However, an employee may be "judgment proof," in that he has few or no assets with which to pay a judgment rendered against him. Therefore, the aggrieved party may sue the employer because he has greater ability to pay.

If an employer is sued in a "master-servant" relationship, he can bring the employee into the suit as a third-party defendant. Then if the employer

[2]The court said this was intrinsically dangerous in the case of **Gragg v. Allen,** 481 S.W.2d 452 (Texas, 1972), where aerial spraying with 2, 4-D and 2, 4, 5-T was decided to have damaged another farmer's cotton crop.

is found liable for the employee's act the employee must be found ultimately liable. If the employee is unable to pay but later acquires significant wealth, he could be required to reimburse the employer for his expenses. There are many factors to consider before bringing an employee into the suit as a defandant. Your attorney can explain them to you.

Legal Classification Changes

The legal classifications for employer-employee relationships can change quite often. It is possible that you may have one employee who serves in the capacity of a servant, an agent and an independent contractor all in the same day. Thus, the factor determining liability for an employee's conduct is the legal classification existing *at the time* of damage or injury.

LIABILITY FOR INJURIES

Every farm and ranch employer has a responsibility to see that his employees aren't exposed to physical harm in the performance of their duties. For example, suppose an employee is plowing with a tractor which has a defective power lift, and that the plow falls on his foot, causing severe injuries. In this case, the employee knew that the lift was defective and had even promised to repair it. Is the employer liable for his injuries? An Illinois court said *yes* in the case of *Fox* v. *Beall,* 314 Ill. App. 144 (1942).

An employer's responsibility for injuries to employees depends upon whether or not the employees are covered by workmen's compensation insurance. In general, if the employer does not carry workmen's compensation he may be sued by injured employees and a jury will determine the amount of damages. If workmen's compensation is carried, injured employees must sue the workmen's compensation insurance carrier rather than the employer, and the magnitude of damages they can recover is limited to a specific amount. An employer carrying workmen's compensation has little fear of a large employee damage judgment which must be paid out of his pocket. His costs will be limited to premiums paid to the workmen's compensation insurance carrier.

No Workmen's Compensation Coverage

If an employer does not have and is not required to carry workmen's compensation insurance, his legal responsibility to keep employees free from harm is similar to his liability to business visitors. The responsibility to employees is relatively great because the employer is benefitted by their presence. The employer has a duty to *warn* them of known hidden dangers, and a duty to *inspect* the premises to locate such dangerous conditions.

If an employee is injured the employer is liable if (1) he has failed to inform the employee of the known hidden dangers which caused his injuries or (2) if, not knowing of the presence of such a danger, he could have discovered it by virtue of a "reasonable" inspection (which is determined by a jury).

Under present law, it may not always be sufficient to warn employees of hidden dangers. If an employee is warned of a specific dangerous condition, the argument is that, since he knew of its existence, he assumed the risk of injury. But in the previously cited case of the power lift accident (*Fox* v. *Beall*), although the employer had warned the employee of the defective lift, he was still held liable on the premise that an employee cannot assume the risk of injury from a dangerous condition unless he *realizes and appreciates the prospective danger involved.*

Obviously it may be difficult to determine when one could have discovered a hazardous condition by a reasonable inspection. Likewise, an employer may not be able to ascertain whether a hired worker understands the significance of the danger. Therefore, carrying either liability insurance or workmen's compensation insurance may be the only ways an employer has of protecting himself from a large damage judgment in a lawsuit.

Covered by Workmen's Compensation

Workmen's compensation insurance only provides protection for employee injuries. It does not protect the employer from liability for injuries suffered by others.

Damages for accidental injuries or deaths of employees which occur during the course of employment will be paid for by the workmen's compensation insurance carrier. Such insurance is payable regardless of whether the employer, the injured employee or another employee was negligent.

Texas farmers and ranchers are not required to carry workmen's compensation insurance, but they may elect to do so. This insurance provides protection against large damage claims and is, in effect, a tradeoff for the insurance premium paid to the insurance carrier. This has the effect of spreading out employee injury costs over time.

It may not always be clear when an employer is required to carry workmen's compensation insurance. If one is legally required to carry it but does not, he foregoes certain legal defenses (e.g., assumption of risk, injuries caused by fellow servants, contributory negligence). Thus, it is imperative that employers check with their attorneys to determine legal responsibilities.

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