

LEGAL LIABILITIES

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In today's litigious society it is important for all of us to do what we can to protect ourselves. The liability of cranberry operations can be divided into four main areas. Each of those will be described briefly below.

Tort Liability (negligence)

Under the law negligence is equal to fault. This means that if some accident is determined to be your fault you will be deemed negligent. Negligence may be shown to people outside our operations (others) or to our employees. We owe others the "duty of due care". This is required from the owners or operators and from their employees **in the course of their employment**. Their negligence is imputed to principal.

In the case of an accident where both parties may have been at fault a court may use a comparative fault system. In this case the negligence of those involved in the accident is compared. Any damages awarded may then be reduced by the amount of negligence determined.

Growers are not, however, required to keep their operations safe for recreational use or to give warning of unsafe condition, use or activity on the their property. For this to apply, growers cannot ask or expect compensation for access to their land.

Tort liability is limited by statues of limitations. After a certain amount of time has passed following an accident no suit may be brought.

There are several ways to avoid or to pay for liability. The first way is through insurance. All businesses should have adequate liability insurance. Make sure that yours is current and is large enough to protect your assets. Your liability policy should cover employees who are operating your vehicles or equipment.

Another type of insurance policy is an umbrella policy. Such policies offer protection "on top of" or in addition to other liability policies.

Businesses may also protect themselves through their corporate structure. While this solution may offer some liability protection it may also have other unwanted attributes.

Employees are covered under worker's compensation. This program covers employees for injuries caused by other employees, or even from their own negligence. More will be said about this later.

Contract Liability

Most contracts take the form of offering consideration (money or goods) for a promise of performance (work). We have the duty or perform whatever was promised in the contract.

Parties can be awarded damages for breach of contract. These damages may take the form of actual damages or consequential damages. Consequential damages are those that flow from the breach. That is expected payments. One example of this is the case of Hadley v. Baxendale from Old English Law that is still cited today.

We must distinguish between oral and written contracts. Oral contracts are enforceable they are just more difficult to prove. Written contracts are almost always better.

Employment Liability

Employment practices are another source of liability. The general rule used in employment practices is the "at will doctrine". That is that hiring, firing, promotion, demotion are at the will of the employer. There are, however, some exceptions to this rule. These are contained in the Wisconsin Fair Employment act. This act disallows job discrimination based on:

- Age
- Arrest or conviction record
- Creed (system of religious beliefs)*
- Handicap*
- Marital status
- National Guard/Military Reserve membership
- National origin/ancestry
- Race
- Sex (including harassment)*
- Sexual orientation
- Unfair honesty testing

* In these cases the employer must accommodate the job to the employee unless it causes hardship.

In addition, employees may not be demoted or fired for refusal to perform an illegal act.

There is a trend to grant relief to employees who were "wrongfully" discharged. The employers liability if found to have discriminated may include back wages, reinstatement, and/or promotion. The employer may also be liable for discrimination on the part of a supervisor or manager.

Employers also have statutory responsibilities towards employees. Agricultural requirements for coverage are somewhat different from general employees.

Worker's compensation coverage is required if you employ 6 or more employees on any 20 days of a calendar year. Worker's compensation is not a fault system. Employees are covered in the system if they are injured on the job **in the course of employment** *regardless of fault*. This also includes occupational diseases. The system does allow for third party claims against defective equipment or negligent co-employees.

Unemployment compensation is required if eligibility requirements are met and an employee does not quit or if not fired for job related misconduct. Unemployment compensation is required if an employer paid \$20,000 in wages during any quarter of the current or prior year, or had 10 employees on 20 days, each day being in a different calendar week.

Employers are required by statute to provide a safe place of employment. This includes have guards in place on equipment if available. Violations of this statute will lead to increased worker's compensation awards. Third party actions in such cases may not be covered by worker's compensation law or insurance. It behooves employers to take all precautions to make their workplace as safe as possible.

Employers are required to withhold Social Security and Federal Income Taxes from employees paychecks. The Federal Income Tax Withholding Requirement is new and began effective January 1, 1990.

Workers have claim on their earned wages. Fired employees must be paid within 3 days. An employee who quits must be paid within 15 days. Failure to pay on time results in a criminal penalty of up to \$500 fine and/or 90 days in jail. Employers can't withhold paychecks or portions thereof for damage caused by an employee without permission.

Cranberry Laws

The "Cranberry Laws" were passed by the Wisconsin State legislature in 1867. They grant cranberry growers the statutory right to construct dams and ditches on lands adapted for cranberry culture. Recent State Supreme Court cases have construed this law to include the right to divert water for use in cranberry culture without permission or regulation.

Caution should be exercised in application of the "Cranberry Laws". By Statute construction of new dams or ditches cannot damage other dams and ditches previously established and maintained. An arbitration system was also established to determine and enforce damages subject to the right to appeal.

The 'Cranberry Laws' are not an unlimited right. The 'reasonable use doctrine' limits the right to withdraw water. Growers are liable for damages from unreasonable use.

The Wisconsin DNR and the Army Corps of Engineers are interested in controlling construction of dams and water use. The law is changing and is likely to be seriously challenged by Wisconsin DNR and others.

Editor's note. This section is intended only to remind you of what you heard at the 1990 Wisconsin Cranberry School. This is not intended to be a legal opinion. If you have questions concerning any of the matters presented above contact a competent attorney.