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LEGAL Entanglements Common to Alabama Farmers

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Legal Entanglements Common to Alabama Farmers

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INTRODUCTION

IN TODAY'S AGRICULTURE, farmers are faced with many legal situations which can be costly. Many farmers are not aware of their legal rights and responsibilities and therefore do not recognize potentially dangerous situations in time to prevent or reduce the amount of loss. It is important to be able to recognize these situations because of the value and costs associated with the farming operation.

Knowing when legal counsel is needed is very important. Many times, situations have progressed too far for legal advice to be of maximum help; therefore, it is important to recognize problems early to alleviate or reduce the damages. Legal counsel should be selected on the basis of knowledge and experience with the particular subject matter of the case.

This study is not designed to substitute for legal counsel but to illustrate instances when legal counsel may be needed.

Research Objectives

The primary objective of this study was to point out specific legal situations that Alabama farmers have been involved in and the economic losses suffered. The specific objectives were as follows: 1) to research specific cases, delineate the laws pertaining to each case, and point out specific economic losses suffered by these farmers, and 2) to present the findings in layman terms so that farmers may recognize potential legal problems and be aware of legal responsibilities.

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Procedures

Since all Alabama statutory laws are compiled in the Code of Alabama, it served as the basic source of relevant cases. The Code is a collection of volumes containing all laws passed by the Alabama Legislature with periodic supplements to include changes or new statutes. The Code also gives a brief explanation of relevant court decisions or case law pertaining to a particular law.

Statutory and case law were analyzed to select the cases the courts used to base their decisions on and those more common to the Alabama farmer. Once selected, the decision and outcome were studied to ascertain what laws were used in the decision and what damages were assessed. Cases that showed a change in the ruling law by case law decisions were also analyzed. Laws governing each case were reviewed and pertinent laws and changes were selected for this study.

A questionnaire was developed for each individual case to determine from the farmer's viewpoint why a particular decision was rendered. The questionnaire was used to ascertain the opinions on the case from the individual who lost. Also, questions were asked regarding what they would do differently to avoid such a situation again. Knowledge prior to the individual's involvement in the case, found by the questionnaire, upheld the conclusion reached in a related study, that farmers lack knowledge about laws pertaining to them (8).

LEGAL SITUATIONS

Fifteen individual cases were selected for this study. For each type of case, there is a brief explanation of what the situation is about, a summary of the case, legal citations for the case, and a summary of either how the law suit could have been avoided or losses reduced. The legal citations contain the laws current in Alabama at the time of this research.

Merchant

In a legal sense, ". . . a merchant is a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who, by his occupation, holds himself out as having

such knowledge or skill" (26). That is, when a farmer or producer hires an agent to sell his goods, he becomes classified as a merchant for that transaction. Therefore, all laws pertaining to a merchant pertain to the farmer for this transaction.

Case One (7)

This case involved a cattle producer who sold 49 head of cattle through an auction market. One animal died prior to the sale and 28 died following the sale. The auction market refused to pay for any of the cattle sold and the seller brought suit against the auction market.

Because most of the animals were sold prior to dying, the legal issue in this case is implied warranty of merchantability. The seller held that there was no implied warranty and that the buyers were the owners at the time of death, therefore he should have received payment for the cattle sold.

A veterinarian testified that the cattle died of corn impaction of the digestive tracts. The auction market claimed the seller had changed the animals' ration from 30 percent corn to free-choice corn before the sale and this change in ration caused the corn impaction of the intestines which resulted in the death of the cattle.

The auction market claimed most of the cattle died before the buyers could load the cattle on their trucks, therefore the sale was not consummated and the auction market should not be held liable for the value of the cattle. The auction market also claimed the cattle carried an implied warranty of merchantability; that is, they were in good health and suitable for purpose sold. They also felt that the cattle died because of the seller overfeeding them, therefore, the buyers should not have been liable for the dead cattle either.

The seller contended that he should receive full payment for his cattle on several counts: 1) normally a sale by auction is complete when the auctioneer accepts an offer from a buyer, 2) usually there is no implied warranty of merchantability in an auction sale, 3) warranty of title is the only warranty implied at an auction sale, 4) the seller made no express warranty to the effect of quality or goodness, and 5) the seller was not a merchant and that once the auctioneer made the sale the ownership of the cattle was transferred to the buyers.

The court ruled that the seller was a merchant because he had employed an agent, who by his occupation presented himself as having knowledge and skill of the particular goods involved. Since the court ruled that the seller was a "merchant," implied warranty of merchantability with respect to the cattle being sold was in effect.

The seller contended that he was only a cattle producer and he employed an agent to sell his cattle. He still believed he was not a merchant within the definition, and he should have received payment for his cattle.

Legal Citations

There are three ways in which a person can become a merchant by definition: 1) he must be a dealer in the goods involved in the transaction, 2) he must, by his occupation, present himself as having skill or peculiar knowledge of the goods involved in the transaction, and 3) he must employ an agent or broker who, by his occupation, represents himself as having such knowledge or skill (61).

A farmer is most often considered a casual or infrequent seller and is not usually classified as a merchant. (When a seller is a merchant, there exists implied warranty of merchantability with respect to the goods, unless it is expressly excluded or modified. Expressions such as "as is," "with all faults," or similar type language can exclude implied warranties (27)).

Farmers should be aware that when they consign cattle to an auction sale or to a broker, the responsibility of the fitness of the cattle remains with the farmer who owns the cattle. An implied warranty of merchantability is attached to these cattle because the auctioneer or broker is considered an agent of the farmer for the sale.

Since farmers are still responsible for the health of their cattle under these circumstances, they should be certain the cattle are fed properly and especially that they are not overfed to increase their weight at sale time. Therefore, changing established practices is not recommended.

Independent Contractor

An employer cannot delegate all responsibility of damage to the contractor. "One who employs an independent contractor to do

work which the employer knows or has reason to know to involve an abnormally dangerous activity, is subject to liability to the same extent as the contractor for physical harm to others caused by the activity" (12). An independent contractor is one who contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work.

Case Two (6)

A farmer hired a custom spray company to apply chemical to his cotton crop by airplane. During the spraying operation, the pesticide drifted onto the property of a neighboring farmer and into his fish pond. The pond became contaminated and the fish died. The neighbor sued for damage to his fish pond and claimed the sprayed chemicals had reduced the value of his land. The spraying operation was conducted by an independent contractor who did custom spraying over a fairly wide area of the county.

The Alabama Supreme Court held that the test of liability by an employer of an independent contractor is one of reasonableness. The employer is responsible for the manner of performance of nondelegable duties by an independent contractor. Also, if an activity is intrinsically or inherently dangerous, a farmer cannot insulate himself from liability for damages by an independent contractor. Aerial application of pesticides was considered by the Supreme Court to be an intrinsically or inherently dangerous type of activity. When a farmer knows or has reason to know that the work can have a special danger to others which is inherent in or normal to the work, no matter how well or skillfully performed, the courts usually hold this to be intrinsically or inherently dangerous work.

Legal Citations

The rule of inherently dangerous activities applies even when the harm is a result of the independent contractor's failure to take precautions against the danger contemplated. This rule does not apply where the negligence of the contractor creates a new risk (53).

A person who engages an independent contractor to do an inherently dangerous activity has a duty to see that all reasonable precautions are taken during the performance of the activity and

that third persons be protected from injury. The employer will be responsible if due care is not taken during the performance of the activity.

When hiring an independent contractor to apply chemicals by aerial application, a farmer should consider experience, cost, and dependability of the contractor. If the farmer employs a contractor who is known to be negligent in his duties, he will find himself liable for any damages done to others because of the negligence in the pesticide application.

One of the reasons the farmer suffered damages in this particular case was because he was not aware of his legal responsibility in hiring independent contractors. He reasoned since he had no control over the independent contractor's actions when he sprayed the field, he should not be liable for any damages caused by the application of the chemicals. If the farmer had been aware of his legal responsibilities he could have insisted that the chemicals be applied on a calm day with very little wind blowing so there would be no danger of the chemicals drifting onto his neighbor's fields or fish pond. Therefore, the conclusion can be drawn that lack of knowledge of his legal responsibilities was the major contributing factor to his having to pay damages in this case.

Adverse Possession

Private citizens can receive legal title to land belonging to another by means of adverse possession without payment of compensation. Where one person starts using the land adversely to the true owner, and uses it for a specified length of time, it may result in the adverse possessor acquiring title. This procedure is similar to forfeiture of the land by the true owner.

Case Three (46)

A farmer who had purchased a tract of land sued neighboring farmers (A and B) to get clear title to the land because the neighbors claimed it as theirs through adverse possession. In litigation to establish a boundary, approximately 3 acres of the land was lost by the farmer based on the statutory adverse possession rule. Neighbor A had owned his property since 1959 and had conveyed portions of it to neighbor B in 1964. Neighbor A claimed a fence as the correct property line.

The farmer was unable to get the property surveyed prior to the purchase to determine any discrepancies in its legal descrip-

tion. In 1974, after the purchase, a surveyor was procured from another county to determine the legal description of the property.

The previous owner of the property in dispute showed the farmer what she believed to be the boundary line of the property prior to the purchase. She had no knowledge of a fence existing on the property as the boundary line. When she and her husband bought the property, there were no fences where the fences now stand; however, at the time of the purchase by the farmer, the fence was on the property.

The farmer's case was dependent on the land not being in continuous use. Also, only neighbor A had a deed of record for 10 years describing any portion of the disputed property. Neighbor B had only a section map, containing subsection lines without overlapping of the property.

The trial court ruled that the neighbors had presented enough evidence to give them title to the property in question by adverse possession. This ruling was affirmed by Alabama Supreme Court on appeal. Neighbor A testified he had openly claimed and maintained actual possession of the land up to the fence since 1959 and that he had hunted game and cut timber off the property during that time.

After the loss of the property, the farmer was compensated by the previous owner by a reduction of the original purchase price. However, he still incurred economic loss because he had to pay all legal fees and title search costs.

Legal Citations

Acquiring property by adverse possession under the Common Law does not require color of title (some kind of deed or paper showing ownership) nor paying of taxes. A person only has to go on the property, exert acts of possession, and claim it as his own for 20 years. There are four requirements under Common Law to acquire land belonging to another: 1) the possession must be actual, the possessor must actually go upon the land for a 20-year period of time, the possessor must act as if it is his own, 2) the possession must be exclusive, the possessor must be adversely possessing against all, he cannot recognize any rights of the original owner or of others in the property, 3) possession must be open and notorious, openly visible for all to see, notorious by acting toward the land as his own, and, 4) possession must be continuous for a period of 20 years (11).

The *Code of Alabama* states for statutory adverse possession to defeat prior acquired title to land, in addition to common law requirements, the following are required: 1) a deed or other color of title conveying title shall have been duly recorded in office of the Judge of Probate in the county in which the land is located for 10 years prior to the action, 2) if the land is subject to taxation, the parties shall have listed annually for taxation in the county for 10 years prior to the action taken, or 3) title derived by devise or descent from a predecessor in title who was in possession of the land. These requirements may seem strict, but they encourage utilization and improvement of the land and are essential to clear title. Adverse possession without recording the title which the claim is made is insufficient to perfect title under statutory adverse possession. Listing for taxation alone is insufficient to give title; it must also be shown that claimant has been in actual adverse possession of the land during the 10 years he listed the property for taxation (20).

Openness, notoriety, exclusiveness of possession, uninterrupted claim, and hostility toward others without consent of the landowner are grounds for adverse possession, along with the required elements of statutory adverse possession. It is up to the adverse claimant to prove the elements of adverse possession. When property is inherited, even though the deceased died without having title to the land, this gives color of title to the heirs.

Occasional acts of entry upon and timber cutting were insufficient to establish trespasser's dominion over said land. Timber cutting must be continuous and persistent to be evidence of a claim of ownership by adverse possession. Possession must be continuous but each type of act does not need to be continuous. Acts of possessory nature are to be considered collectively rather than independently to determine sufficiency of possession.

Adverse possession will not ripen into title if entry and possession of land are with permission of the true owner. Possession must be adverse to the owner. "Adverse possession becomes perfect title on the theory that the true owner has, by his own fault and neglect, failed to assert his right against the hostile holding, but all presumptions and intendments are favorable to the title, and possessions are not presumed to be hostile thereto" (49).

To perfect title by adverse possession, where all traditional statutory elements are present, tacking or adding periods of possession by successive possessors is permitted against the true owner,

unless the claimant's predecessor in title did not intend to convey the disputed land. The conveying instrument does not need to have a legal description of the disputed property, only a good description, and it is irrespective of the period of possession by the present claimant's predecessor in title. The adverse claimant cannot tack his possession onto the possession of the prior occupant to get the required 10 years if the deed or color of title did not purport to convey the land claimed (64).

If a coterminous or nextdoor landowner holds actual possession, continuously, exclusively and under claim of right openly of the disputed land for the required period, and believes this to be the correct boundary line, he will acquire title up to that line. This rule applies even if the location originated by mistake; it is immaterial that he would not have claimed the land had he known he was mistaken (59).

If the farmer had had the land surveyed before purchase, complications as to the boundary line could have been eliminated as he would have known where his property ended. Also, choosing a local surveyor would have been a better choice because of his familiarity with the people and property involved. The local surveyor probably would have had some idea what property the neighbors were claiming as their own.

In general, when purchasing real estate, a person should hire a local or competent surveyor to establish the correct legal boundary lines of the property and to look for indications as to use of the property by people other than the owner. Use by other people might lead to adverse possession or easement claims.

Quiet Title by Prescription

Adverse possession or prescription under common law applies as follows: ". . . If one person held and used the land of another for a long period, the person so holding would, after a period of years, acquire title to such property so long as the possession was open, actual, notorious, adverse or hostile, continuous, and exclusive under claim of right," for a period of 20 years (63).

Case Four (36)

A farmer died testate (with a will) in 1906, survived by his second wife. In his will he devised property to his widow in a specified form. The will specified that if his wife should die without child resulting from her marriage to him, then she should

have the power of appointment to devise one-half of the 831 acres of land by her will. The other one-half was to be used to provide a monument in the memory of the deceased, his first wife, and his second wife. The second wife remarried after the death of her husband. She died in 1936 leaving a will devising to her nephew all of the real estate of which she owned at her death. In 1964, the nephew filed a verified Bill of Complaint to clear title to the 831 acres against the heirs of the first husband. The final decree of the Circuit Court vested title in fee simple to the land described in the will to the nephew.

The heirs of the first husband contended that the nephew's title could never ripen into fee simple title for all of the land because the will of the wife did not constitute "color of title" to all of the land which is acquired under statutory adverse possession. They felt that the wife's will was only "color of title" to an undivided one-half interest in the land specified in the suit.

On the heirs' appeal, the Alabama Supreme Court vested title in the nephew under the doctrine of prescription or adverse possession under common law. The doctrine of prescription does not require color of title to establish title by adverse possession. The adverse possession statute, requiring only 10 years, has no application to the prescriptive period of 20 years. For prescription, it must be individual, continuous possession of user, without the recognition of adverse rights, for a 20-year period. Upon establishment of claims and use, the law presumes the existence of all the elements necessary for adverse possession or title without further proof.

Legal Citations

Under Alabama statute of adverse possession, a person can file a verified bill of complaint in the circuit court, in equity, of the county in which the lands lie, against all persons claiming any title to or interest and clear disputes concerning the same when either of the following situations exist: 1) complainant is in the actual, peaceable possession of the land, 2) neither complainant nor others are in the actual possession and complainant has held color of title to the land, or interest for a period of 10 or more consecutive years prior to filing of the bill and has paid taxes on the lands or interest for the whole period, 3) neither complainant nor others are in actual possession and complainant together with those through whom he claims have held color of title and paid

the taxes on the lands or interest for 10 or more consecutive years prior to the filing of the bill, or 4) neither complainant nor others are in actual possession, both have paid taxes during such period of 10 years on the lands or interest, and no other person has paid taxes thereon during any part of said period (22).

Complainant in an action to quiet title shall exercise diligence to ascertain the name and residences of those having or claiming interest in the lands. This is to make them party defendants by perfecting service under state statutes and by due process of law. The court shall appoint a guardian *ad litem* to represent and defend the interests of infants, incompetents, or unknown parties in the proceeding. All defendants have 30 days from date of service or perfection of service to answer the complaint (23).

The heirs should have been aware of their legal rights concerning their potential ownership of the lands in question. If the heirs thought the nephew held color of title, they should have contested his claim before 10 years had passed. If the heirs felt the nephew did not have color of title to all the property, they should have been aware of the common law rule of adverse possession, commonly called prescription, which allows a person to acquire title to property, without color of title, when held adversely for a period of 20 years. Since the heirs waited 28 years, the nephew gained title to the property under common law rule. The nephew could probably have gained title under statutory law of adverse possession since he did hold some form of color of title.

Easements

An easement is a non-possessory interest in lands of another or the right to go upon the lands of another and make limited use thereof (9). Easement appurtenant develops where two pieces of land are owned by different people. It evolves when one person has a right to go across the other's land to get to and from the public road.

Case Five (47)

A landowner brought suit seeking to enjoin a neighboring farmer from obstructing what was alleged to be a public road. The farmer owned property that nearly surrounded the landowner's property. Dispute was over two roadways located on the farmer's property. The landowner sought to prove the roadways had been in open and continuous use for more than 20 years, time required to create an easement by prescription.

The farmer contended the roadway had always been private and had been used by both previous owners of the two properties. In 1926, when both of the previous owners made use or acquired their respective properties, there was a footpath established on the previous owner's property which later was widened to a road. The evidence tended to show that only the previous owners or people visiting them used the path or, later, the roadway. The bridges on the roadway had not been maintained and were in a deteriorated condition when the farmer bought the property. The farmer repaired the bridges in 1967 and in 1975 constructed fences which blocked the entrances to the two roadways.

The court ruled in favor of the farmer for several reasons: 1) there was no proof that the landowners or their predecessors made claim of right to roadways, 2) evidence was insufficient to prove that the roadway was open, defined, through reclaimed land, and in continuous use by the public for a period of 20 years, and 3) because of conflicting testimony on the map prepared by the surveyor, evidence was not sufficient to support dedication of roadway by prescription.

Legal Citations

An easement is not established only by use for a period of 20 years or more. The use must also be adverse to the owner of the premises, exclusive, continuous and uninterrupted, with actual or presumptive knowledge of the owner. It is up to the owner of the premises to prove the use of the roadway was permissive. An easement may be created in the following ways:

(1) Express grant (in writing); (2) exception, or by reservation in a deed; (3) implication, requirements being a) obvious on the surface of the land at the time the land was purchased, b) continuous, c) use reasonably necessary, and d) ownership of the land by one individual at the time it was conveyed; (4) necessity, as if landlocked; (5) prescription; and, (6) condemnation (10).

Prescription is based on the theory that adverse use for a long time, at least 20 years, is a worthy substitute for a grant. If one has permission it cannot ripen into an easement by prescription because it initially began under permission.

An easement may be acquired by prescription in a manner similar to that by which ownership of a possessory estate may be acquired by adverse possession. The prescriptive period starts to run when the landowner has either a cause of action against the

claimant or the physical means of preventing the use. Use must be adverse as distinguished from permissive and must be open and notorious. Use must also be continuous and exclusive. Tacking periods of adverse use by a subsequent claimant is allowed provided there is privity of estate between them.

In this case, the landowner failed to prove the roadway was open, defined, through reclaimed land, and in continuous use by the public. She would have needed proof that use of the roadway was without permission and adverse to the owners of the property; however, evidence tended to show that both predecessors in title had some form of agreement as to use of the roadways. Also, because the property was not completely surrounded or even cut off without another way to the highway, the landowner's motion for dedication of a roadway was defeated.

An easement is difficult to establish because of the owner's knowledge of use of the land. He could give the adverse user his permission, therefore retaining control and ownership of the property being used by another. Landowners should be aware that non-permissive use of a roadway on their property can develop into an easement. Also, if property is landlocked from a highway, a road across the surrounding land can be dedicated as a roadway for public use so as to get to the landlocked property.

Parol Evidence Rule

Based on the "parol evidence rule," where two parties enter into a written contract and intend it to be the complete statement of their agreement, no evidence of prior oral understanding or negotiation is admissible that contradicts or varies the written contract. The written agreement constitutes the contract and evidence will not be admitted that will alter it (57).

Case Six (51)

A cattle owner and a landowner entered into an agreement whereby the landowner was to look after some cattle for the cattle owner. The agreement was put in writing, but all of the issues that were agreed on orally were not included in the written instrument. Conflict arose later as to the agreement of the cattle owner to pay one-half of the supplemental feed and minerals. This was not included in the written agreement, but had allegedly been agreed upon orally before the contract was drawn up.

According to the written agreement, the landowner was to put the cattle on pasture and furnish supplemental feeding as needed to keep the cattle in good condition. The cattle owner contended the animals were not fed according to the agreement and were therefore in poor condition. The landowner counterclaimed, stating the cattle owner breached his agreement to pay his share of the supplemental feed and minerals.

From 1972 through part of 1974, the cattle owner had made checks payable to the landowner, but since winter of 1974-75, the cattle owner had refused to pay. The landowner argued on appeal that the evidence showed the written contract was modified by an oral agreement of the parties to share equally the cost of supplemental feed. The cattle owner offered evidence to show the checks were loans.

The trial court awarded the landowner a judgement in the amount of $3,000 to compensate for unpaid feed bills and dismissed the cattle owner's complaint on the grounds that the cattle were kept and fed in a first class manner, based upon inspection of the cattle. On the cattle owner's appeal, the Alabama Supreme Court upheld the decision of dismissal of his claim, but reversed the judgement of compensation to the landowner. Because of the parol evidence rule, the Supreme Court would not admit evidence to support the claim by the landowner of an agreement for the cattle owner to pay half the cost of supplemental feed.

Legal Citations

When contracts are reduced to writing, essential items must be included in definite terms. Defects of indefinite expression or omission cannot be cured by proof of the parties' prior oral agreement of the terms, since this would add to or vary the effect of the writing. However, prior oral evidence of meaning attached by the parties to ambiguous terms in the written contract is admissible (56). After a contract is written, it can be modified later or rescinded by oral agreement of the parties, except as otherwise provided by statute.

The parol evidence rule is important for farmers and other people in the agricultural community. The main point of the rule is that promises or oral statements made during contract negotiations are of no consequence unless the statements are put into the written instrument. The purpose is to exclude all evidence that will contradict or vary the terms of the written agree-

ment and to put certainty and finality in definition of the rights of the parties' obligations and exclude fraudulent claims. There are some exceptions to the parol evidence rule, such as: (1) It is admissible to show as evidence that no agreement or contract was made or the written contract executed by the parties was voidable by either party. (2) It is admissible to show that the writing was only a partial integration of the complete contract. (3) It is admissible to interpret or explain the terms of a written instrument (58).

The cattle were classified as healthy and in good shape at the time of the suit. Therefore, no damages were awarded to the plaintiff. "The fundamental principle of compensatory damages is to put the injured party in as good a position, so far as money damages can put him, as he would have occupied had the defendant duly performed. Compensatory damages are measured by the difference between the value of the promised performance and plaintiff's cost to perform, and include losses caused and gains prevented by defendant's breach" (37).

This case emphasizes the importance of knowing about parol evidence rule of contracts. If the landowner had been familiar with this rule, he would have insisted that all the important terms of the contract be put in the written contract. The trial court ruled that the prior oral agreements should be considered and gave the landowner money damages. But on appeal, the Supreme Court ruled that parol evidence rule would not allow evidence to be admitted to show a prior oral agreement that would alter the contract. Landowner's lack of legal knowledge regarding contracts prevented his collecting $3,000 in damages.

Trespass

Trespass may be defined as the "doing of an unlawful act in an unlawful manner to injury of another's person or property" (34). The unlawful act causing injury may be actual or implied in law.

Case Seven (65)

In 1956, a farmer purchased a lot and during that year erected a fence around three sides of the lot. The fourth side was adjacent to a highway. He testified that he put bird seed out on the property in an effort to create a bird sanctuary. He also testified to having a garden until a neighboring landowner interfered with it by continually trampling the plants. In 1966, the neighbor cut numerous trees on the property, even though the farmer had no-

trespassing signs posted on the property. The farmer had also paid taxes on the property since date of purchase.

Witnesses testified to having seen the farmer on the property numerous times, but had only seen the neighbor once in 1966. The neighbor claimed he had started clearing the lot in 1960 and that the farmer had put a fence around it that year. The neighbor removed the fence the next year and the farmer replaced it again and when he started to remove it again, the farmer made no attempt to stop him. The neighbor claimed the only act of possession by the farmer was erecting the fence.

Points raised by the neighbor in his defense consisted of, did the farmer own the land and trees and did he (the neighbor) willfully and intentionally cut the trees knowing they were on the farmer's property? Also, the trial court refused to receive evidence of the final decree in a suit establishing the property line. Therefore, the neighbor contended the decree was admissible to show the land line had been in dispute and that he made a bona fide entry upon the lot under a claim of right and consequently was not subject to the statutory penalty for cutting timber on the lot.

The trial court found: 1) the farmer entered upon said lands under color of title in 1955, 2) had remained in possession until 1966 at which time suit was filed, 3) the neighbor entered into possession of adjacent lands in 1959, 4) only action to interfere with the farmer's possession was removal of fences, 5) the neighbor did not meet the measure of proof sufficient to start the statute of limitation of adverse possession, and 6) when the neighbor entered on the farmer's land, he was bound to know the state of the title, therefore he willfully and intentionally inflicted the damages. Damages were awarded to the farmer in the amount of $100. Upon appeal, the Alabama Supreme Court upheld the verdict on the grounds that evidence was sufficient to establish that the farmer was owner of the land and the trees that were cut.

Legal Citations

If a person cuts trees on land of another under the honest belief that the land is his own or belongs to a third party who has consented to the cutting, he is not liable for the penalty prescribed. The penalty being $20 for every cypress, pecan, oak, pine, cedar, poplar, walnut, hickory, or wild cherry tree and $10 for all other trees cut or damaged. This payment goes to the owner of the

property and trees of which have been cut or damaged. The action for statutory penalty for entering on land and destroying trees may be joined with an action of trespass (35).

A person should be aware of where property boundaries are, otherwise he could be sued for trespass and damages done to another's property. As shown in this case, the farmer had exerted some form of ownership by erecting fences which the neighbor removed. At the first erection of the fences, the neighbor should have realized someone else claimed the land. He therefore should have known when he cut the trees that they belonged to someone else. That is why the court found the damage inflicted to be wanton and intentional on the neighbor's part.

Before going onto property that you are not sure belongs to you, look for indications of ownership by another. Indications could be in the form of no-trespassing signs, fences, or evidence of timber having been cut. These indicators show that someone is claiming rights to the property.

Case Eight (55)

In 1972, a farmer leased his land for strip mining, reserving the right to remove timber from the land prior to mining. An employee of the mining company was retained as a woods foreman. His duties were to help in any way possible in clearing the land. The coal company marked the boundary line dividing his land from a neighboring farmer. The foreman then secured a lumberman to complete cutting the trees left uncut by the wood yard. It was during this timber removal that the trespass occurred on the neighbor's tract. Approximately 52 pine trees were cut on his property.

The neighbor brought action against the farmer for trespass to land and conversion of trees thereon. The trial court awarded punitive damages against the farmer in the sum of $6,000. The Court of Civil Appeals upheld the verdict of the trial court because the court held that the complaint asserting the farmer's liability for actions of his employee was proper; that evidence was sufficient to establish that the lumberman was an agent of the farmer and his foreman, and was acting within scope and line of his employment when he cut trees on the neighbor's land; and that evidence was sufficient to support jury award of punitive damages.

Where evidence shows that a wrong is committed by an employee while he is executing duties assigned to him, it considers

the employee as acting in line and scope of his employment. If the act committed by the employee was incident to carrying out his assigned duties by the employer, the employer may be held responsible even though he did not authorize the employee to resort to such means.

The farmer contended that there could be no recovery in an action in trespass against the employer for the intentional tort of his employee without proof that the employer directed, authorized, participated in, or ratified the act. He claimed that there was no proof that he gave such direction. He also maintained that the lumberman was an independent contractor instead of an employee and that he should not be held responsible for acts of an independent contractor.

Legal Citations

For a jury to award punitive damages in a trespass case, the trespass must be attended by rudeness, wantoness, recklessness, in an insulting manner, or be accompanied by circumstances of fraud and malice oppression, aggravation, or gross negligence (54). The jury awarded compensatory and punitive damages because the evidence showed that the area where the trees were to be cut was clearly marked and that the lumbermen were shown the marked area. This evidence furnished proof that cutting of trees outside the marked area was either intentional and deliberate or was done with gross negligence.

In any civil action, it is permissible to charge the principal with direct trespass and support the charges with proof that the act was committed by an agent, servant, or employee who was acting within the line and scope of his employment. The principal does not have to actually participate (2).

If the farmer and his woods foreman had known that they would be liable for trees cut on the neighbor's land, they would have taken a greater interest when the trees were cut. Care should have been taken in supervising the second cutting of the trees. The lumberman was shown the marked area, therefore any trees he cut outside that area was considered intentional and deliberate. Even though, in normal circumstances, the lumberman would have been classified as an independent contractor, he was classified as an agent in this case; therefore, liability for his deliberate actions was placed on his employer. In general, an employer is not liable for acts committed by an independent contractor.

Therefore, lack of knowledge dealing with the law surrounding liability of an employer for the actions of his employee cost the farmer $6,000.

Livestock Laws

Livestock or animals are defined as horses, mares, mules, jacks, jennies, colts, cows, calves, yearlings, bulls, oxen, sheep, goats, lambs, kids, hogs, shoats, and pigs (15). This definition applies to all statutory laws relating to animals.

The provisions of Alabama statutory law limiting the liability of an owner of livestock or animals when a motor vehicle is involved were adopted to protect owners of livestock from liability for simple negligence in rural areas. Two cases were used to illustrate these laws.

Case Nine (42)

This case involved four horses belonging to a farmer. The horses jumped the pasture fence and strayed upon a neighbor's property. When the farmer and a helper went to retrieve the animals, only two could be bridled. The farmer decided to let the two free horses go at their own will, following behind the bridled horses being led by the helper, with him following behind in a truck. In taking the horses back to their pasture, the helper walked the animals on the shoulder of the highway next to the pasture. While returning to the pasture with the horses, a car appeared around a curve and the headlights startled the two free animals and caused them to bolt onto the road. One of the animals was hit and killed by the motor vehicle.

This action for damages arose as a result of the collision of the automobile with the farmer's horse. The trial court awarded damages of $1,200 to the motorist, which the appellant court affirmed. The courts held that there was sufficient evidence to support the conclusion that the farmer knowingly and willfully put the horse upon the public highway and that contributory negligence was not a defense to the tort.

The farmer contended that at most, the evidence showed him negligent or grossly negligent and was insufficient to carry the burden of proof. It was up to the motorist to prove that the owner of the animal placed or put it upon the highway with a designed set purpose, intention, or deliberation. In court, it was

found there was no other attempt to confine or catch the loose animals and that the farmer had had a similar experience before in which five animals were hit by motorists.

The court found that the farmer was liable because he knew the possible consequences of having the horses walk along the side of the road. Because he had had a similar experience before, he could be fairly certain of the result of allowing the horses to go free. Therefore, claiming only negligence on his part was not allowed by the court.

Case Ten (14)

Another case, in which an animal was involved, occurred in 1973 when an owner of a bull was delivering the bull to a new owner. He was transporting the bull in a truck with a 7-foot stake body. When he stopped the truck at a traffic light, the bull jumped out of the truck. He followed behind the bull in an attempt to capture him. A motorcyclist started circling the free animal which excited the bull and caused him to run. The bull entered upon property of another and bumped into and kicked the wife of the property owner.

The property owner filed suit for damages for personal injuries received when struck by the bull. The suit was based on several counts: 1) trespass to real property, 2) relief based on bull owner's wrongful and improper keeping of an animal with dangerous propensities, and 3) negligence in transporting the bull, thus allowing it to escape.

The trial court found in favor of the bull owner; on appeal by the property owner, the Alabama Supreme Court upheld the decision. Both courts held that the bull's owner was not strictly liable for damages on property as a result of trespass by the bull.

For the bull owner to be liable, it must have been shown that he was negligent in transporting his bull or negligent in permitting him to escape. Under common law, the owner of an animal was liable if he failed to exercise reasonable care in controlling his animal.

The bull owner stated that more than reasonable care was taken to see that the bull would not get out of the truck. The height of the body of the truck exceeded the recommended height of 5 feet and there was an additional animal on the truck in an effort to keep the bull calm. He felt that excitement was the reason for the animal's escape and that the circling motorcyclist

caused the animal to become more excited and contributed to the bull causing injury to the wife. The bull owner won the case and therefore did not suffer any monetary damage or court costs.

Legal Citations

In an effort to prevent livestock from running at large, Alabama statutory laws state: 1) it shall be unlawful to permit livestock to run at large in any city or town of this State of 5,000 or more inhabitants, 2) the governing bodies of such towns and cities are empowered, authorized, and required to adopt such ordinances and laws to prevent the running at large within these limits of all livestock and take up and impound all such animals found so running at large; also to prescribe and provide for the collection of penalties and impounding fees for such livestock (17). The term "at large" refers to animals that are free from restraint or control by the owner.

Alabama stock laws have some facets which are important to the livestock owner. They are as follows: 1) it shall be unlawful for the owner of livestock to knowingly, voluntarily, negligently, or willfully permit any such livestock to be at large in the State either upon the property of another, upon public lands, highways, roads, or streets, 2) the owner of such livestock that is running at large shall be liable for all damages done to crops, shade, fruit or ornamental shrubs and flowers of any person, and 3) any law enforcement officer of any municipality, state, county, or city shall take possession of any livestock running at large and notify the owner of such livestock within 24 hours if the owner is known (16). This does not cover animals that cause damage to any motor vehicle or occupant thereof unless it is proven that the owner of the livestock knowingly or willfully placed such livestock upon such public highway, road, or street.

Livestock owners should be aware that they can be held liable for damages done to another's person or property. It is only rarely, in the State of Alabama, that a livestock owner is found to be liable for damages to motorists on highways because the laws were made to protect the farmer for simple negligence. If it can be foreseen that a problem could arise, the farmer could be charged with intentional conduct for the damages that occur.

If reasonable care is taken to restrain livestock, the farmer will usually not be liable for damages caused by the animals. However, if the farmer knows or has prior knowledge that his animals can

free themselves and does nothing to prevent the escape, he will be found liable for damages to crops caused by the animals.

Nuisance

The statutory law of nuisance is based on the common law that a person must use his property so as not to injure that of his neighbor. It involves the idea of continuity or recurrence of the acts causing injury. A nuisance may be defined as ". . . that which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him" (3). A civil wrong based on a disturbance of rights in land is considered a private nuisance.

Case Eleven (62)

The first nuisance case involves two broiler houses. The activities of the owner, in growing, keeping, and maintaining broilers, was found to materially interfere with the enjoyment of a neighbor's premises. It was also found that this activity reduced the market value of the neighbor's property. Broiler production was their only agricultural enterprise.

The court found that the broiler house operator used good poultry practices in the management, but that all such practices were for the benefit of the broilers, and that little had been done to protect the neighbor from offensive odor and broiler refuse. The broiler houses were constructed solely for economic considerations and for the convenience of the operator. Judgement was as follows: 1) the activities were a nuisance, included in this was a portion of the dwelling house and the yard, 2) the operator was enjoined from using the two broiler houses for that purpose in their present location, 3) the operator was enjoined from burning broilers at the present location, 4) the operator was enjoined from locating or relocating within 300 feet of the north boundary of the east half of their property, 5) the operator was to pay damages of $500 to the neighbor, 6) the operator was enjoined from creating or maintaining a nuisance to the neighbor, 7) some of the provisions of injunctions were suspended until a certain time, and 8) the operator could get a review of the injunctive provisions by application to the court on or before a date set by the court.

The court decision was based on the principle that each person owning property can only use his property so as not to mate-

rially interfere with the enjoyment of the premises of another. The operator filed a motion for review of the injunctive provisions, but it was overruled.

The operator stated that the operation of the houses as a whole was not enjoined. Only parts of the houses could not be operated, about 50 feet in the first house and 100 feet in the second house. Blocking off these parts did not reduce insurance premiums or mortgage payments, therefore the houses became unprofitable to operate. She stated that the first house was valued at approximately $15,000 and the second house was valued at approximately $25,000.

The neighbor had filed suit without notifying the operator about being unhappy with the operation of the broiler houses. The operator stated she had no idea that a problem existed and felt the neighbor should have stated the unhappy feelings before filing suit.

The operator later sold the property and the new owners reopened the broiler houses. They were able to do this because the court did not enjoin any others from operating the houses. The neighbor would have had to file another complaint to get an injunction against the new owners to prevent them from operating the broiler houses.

Case Twelve (37)

This nuisance case dealt with the operation of a hog parlor. The farmer had been in the hog business for approximately 20 years, with at least 6 years in the present location. The problem started when the operator was overseeing the construction of hog parlors for an employee of his, with whom he had cosigned a loan. The employee quit his job, resulting in the total operation coming under his ownership. The adjacent landowner came over to see what was going on and told the farmer that she would not allow a hog parlor next to her property because she was planning to put in a subdivision.

The neighbor alleged: 1) that the farmer started operating hog parlors on the adjoining land and that the parlors were adjacent to a creek that flowed to a pond on her property, 2) that the lagoons were constructed improperly, that they leaked into the creek, and then contaminated the pond on her property, 3) the contaminated creek flowed across her property, destroying greenery and crops, 4) that her home had become unlivable and that her

property had been greatly depreciated as a result of the obnoxious odors and conditions, 5) there was threatened irreparable injury and destruction of her business of farming and raising animals, and 6) she claimed the sum of $25,000 in damages. The trial court awarded $8,000 damages to the neighbor and enjoined the farmer from operating his hog parlors.

On appeal by the farmer, the court of Civil Appeals held that 1) there was sufficient evidence to support a finding of nuisance, 2) neighbor was not required to elect between injunctive relief and damages, and 3) instructions to the jury regarding recovery of damages for mental suffering were prejudicially erroneous. The part of the judgment relating to damages was reversed, but the injunctive relief was affirmed.

The farmer stated the approximate losses incurred were, injunctive ($10,000), court costs ($8,000), and loss on the place ($16,000). Another loss of $8,000 would have occurred if he had not appealed the trial court's decision, because this loss was reversed on appeal.

The farmer appealed because he felt the initial court decision was improper and because of certain circumstances, i.e., the judge would not allow testimony if the other attorney objected, he would not allow the operator to testify as to expenses (only gross income from the unit), and he would not allow qualified people from Auburn University, county agents, or others to testify as to the operation standards. He stated his operation was satisfactory according to the regulatory agency.

Legal Citations

To recover damages in a nuisance case, the principal elements are value attached to use or enjoyment deprived of, loss of rental or use value of the property for temporary nuisance, permanent diminution in value of the property for a permanent nuisance, specific losses, or income from an established business. Also included can be the value of personal discomfort or inconvenience suffered, or injury to health or other personal injury so far as they affect one's own enjoyment of the premises (50). Factors such as proximity of residential property, size, and nature of the livestock enterprises and manner in which they are conducted are critical.

In general, when the nuisance results in mere injury to the property, damages for mental distress or suffering are not recover-

able. Liability is imposed in cases where harm or risk to one is greater than one ought to be required to bear under the circumstances, at least without some form of compensation.

In the two cases, the farmers suffered some sort of monetary damage and had injunctions imposed. Since the final decrees of both cases, a new law has come into effect in the State of Alabama. In essence, the new law states that no agricultural or farming operation or any part relating to their operation will become a nuisance, so long as they have been in operation for more than a year, if they were not considered a nuisance since the operation began. This law does not apply when the nuisance is a result of improper or negligent operation (19).

The first part of this act does not affect the right of recovering damages for injuries or damages sustained due to operation of the business. In other words, a person can be compensated for damages caused by pollution, overflow onto property, or any damages caused by the agricultural or farming operation (19).

This new law tends to reduce risk to the established farm operator dealing with his particular farming operation. Therefore, people who move into an established agricultural area cannot maintain that a nuisance exists if the operation has been in existence for more than 1 year.

The new law would not have affected the broiler house decision. The operator stated that the first house had been in operation for at least 2 years prior to the suit, but the second house became operational within 1 year of the suit. If it had just been the first house in the suit, they would not have had to enjoin a portion of the house, because qualified people stated that the operator used good poultry practices, had been in operation for more than 1 year, and was not considered a nuisance prior to that time. Because of the enlargement of the business, the neighbor felt activities in growing and maintaining broilers interfered with the enjoyment of his premises. Therefore, portions of both houses contributed to the nuisance decision.

The hog parlor case would probably have been reversed if the new law had been in effect. His operation had been in existence at least 6 years and was not considered a nuisance during that time. Qualified people in agriculture stated he used the most modern facilities available at the time and that his operation met regulation standards. So, the new law would have benefitted the farmer if it had been passed prior to his nuisance suit.

Homestead

In defining a homestead, the homeplace shall include land cultivated by the owner, land used to obtain timber and firewood, and land used for pasture. "A homestead, in law, means a home place, or place of the home, and is designed as a shelter of the homestead roof, and not as a mere investment in real estate, or the rents and profits derived therefrom" (38).

Case Thirteen (44)

A farmer died in 1956, owning a single 115-acre tract of land. The debts owed by the estate consisted of a mortgage on the real estate which his widow paid shortly after his death. The deceased died without a will (intestate) with no children or lineal descendants surviving him.

The widow petitioned the court to set apart her homestead interest in fee simple in land owned by her husband at his death. The circuit court awarded her fee simple title and the heirs of her husband appealed. The Alabama Supreme Court held that the evidence supported the finding that the single 115-acre tract of land owned by the husband at his death constituted a homestead. They also assumed an alleged oral agreement of the widow to hold land during her lifetime and transfer it at her death constituted a trust which could defeat the petitioner's claim.

The collateral heirs of the husband claimed they signed a quit claim deed to the widow for their interest in the timber on the property in question so she could cut the timber and pay the outstanding mortgage. The heirs believed the widow would have a life interest in the property and at her death the property would go to them as the collateral heirs. They also claimed part of the 115 acres was rented to two individuals who lived in houses on the property, part of which they farmed. Such rental or commercial use of the property, they claimed, precluded a finding that the entire tract constituted a homestead.

Testimony during the case indicated that these persons "rented" the land on the "thirds and fourths," a share-cropping type of rent. It was also described as a "joint venture." Therefore, an employer-employee relationship between the landowner and soil tiller would not prevent a finding that the land constituted a part of the owner's homestead.

Legal Citations

Based on the Alabama Code, the homestead shall be exempt from administration and payment of debts in favor of the surviving spouse and/or minor children if the improvements and appurtenances do not exceed $6,000 in value and 160 acres in area. There is no set value limit if the homestead is devised by will and if there are no debts or the remainder of the estate is sufficient to pay all debts. Also, if the surviving spouse or minor children pay the remaining unsatisfied claims, the homestead value is without limit. However, in area, the homestead shall not exceed 160 acres (24).

Whereas the decedent occupied the property involved and made use of it as a homestead at the time of his death, and this was all the property he owned in the State, and it did not exceed in area or value allowed by law, the widow takes a life estate without the necessity of any action by her (48). Whatever title such heirs claim, in the absence of a will, will arise out of and depend upon the statute of descent and distribution of the State of Alabama (41).

When the homestead that is set apart is all the real estate owned in this State by the decedent at time of death, the title vests absolutely in the surviving spouse, the children, and descendants of deceased children. When there is a surviving spouse and minor children, the estate shall not be divided and sold for the life of the surviving spouse or minority of the children, unless consent is given by the surviving spouse and legally appointed representative of the minor children. Minor children, without a surviving spouse, are entitled to exclusive possession of such real property during their minority. If there is a surviving spouse only, but no minor children, the surviving spouse receives exclusive possession of the real property during his or her life (25).

Renting part of the homestead does not destroy homestead rights, as long as the total does not exceed the statutory limits on value or area (13). The owner's use of payments from rented houses, used for support of himself and wife, does not remove the property from part of homestead.

The heirs could have saved time and money if they had known about the laws dealing with homestead. The estate had been sufficient enough to pay off debts of the estate and the total amount of land involved did not exceed the legal requirement. Since there were no children of the deceased, according to law, title

would vest absolutely in his widow. Claim as to the rented property, constituting part of the homestead, could have been resolved if the heirs had known the arrangement between the decedent and the farmers. With this knowledge and the legal aspects involved, they would have known that filing a claim against the homestead would have been futile.

Workmen's Compensation

The Workmen's Compensation Act creates a right of compensation against the employer on account of the death of an employee arising out of and in the course of his employment (45). This refers to the employment as the cause and source of the accident; it also refers to time, place, and circumstances under which the accident took place. In compensation proceedings the burden of proof is on the plaintiff.

Case Fourteen (60)

In 1975, a 12-year-old girl was killed in an automobile accident while working for a nursery. Since 1973, the employees of the nursery had been told, and it was posted, that they were working under Workmen's Compensation Coverage (WCC). In 1975, the nursery paid the father $1,000 as required under the Act. Nine months after his daughter's death, he filed suit declaring negligence on the part of the nursery, which later he amended to include a count based on the Alabama Employer's Liability Act.

The nursery filed a Bill for Declaratory Judgement, asking the trial court to declare it immune from any further civil liability because of the applicable provisions of WCC Act. Also, the father had already been compensated under the Act, thus precluding any suit based on common law or other statutory liability.

The nursery had paid premiums for coverage to its insuror which had handled and paid eight separate claims to injured employees and properly reported these to the Department of Industrial Relations. According to Department of Industrial Relations records, the nursery had filed the form entitled "Notice of Compensation Coverage" prior to the fatal accident but had not filed the form entitled "Employer's Notice of Election to Accept the Provisions of the Workmen's Compensation Law of Alabama" until after the accident.

The Circuit Court held that the employer had effectively elected coverage under Workmen's Compensation Act and that

suit was thus precluded. The father appealed this decision. The Alabama Supreme Court held where Department of Industrial Relations had notice of employer's attempt to come under the Act it would be as if effective election of coverage had occurred.

Legal Citations

A single act of taking out insurance or paying a claim may not be sufficient evidence of intent. However, actions such as employer has manifested intent to elect coverage and concerned parties act at all times as though coverage is in effect, should control Workmen's Compensation for farm laborers whether or not the exact form appears in the files of Department of Industrial Relations. Consistent pattern of behavior on the part of the employer, employees, and Department of Industrial Relations will be sufficient evidence of intent to come under Workmen's Compensation Act (28).

Under this article, the following are not considered a defense against an employee's claims: 1) employee was negligent, unless it appears such negligence was willful or that the employee was guilty of willful misconduct, 2) injury was caused by the negligence of a fellow employee, or 3) employee has assumed the inherent risks in the work, or that arise out of his employment or, 4) failure of employer to provide and maintain same premises (29). This article ". . . shall not be construed or held to apply to domestic servants, to farm laborers whose employers have not filed an election to become subject to this chapter, or to persons whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer or to any employer who regularly employs less than three employees in any one business or to any municipality having a population of less than 2,000 according to the most recent federal decennial census or any school district. Any individual employer who regularly employs less than three employees in any one business, any farmer or any municipality having a population of less than 2,000 according to the most recent federal decennial census, or any school district, may accept the provisions of this article by filing written notice thereof with the Department of Industrial Relations, a copy thereof to be posted at the place of business of said employer" (30).

Any employer who elects to accept the provisions may at any time withdraw the acceptance by giving like notice of withdrawal.

Capacity to earn is the basis for compensation. The test of the employee's ability to earn is the difference between the average weekly earnings at the time of the injury and the average weekly earnings he is able to earn in his partially disabled condition.

The injured employee or his representative shall give the employer written notice of cause of accident within 5 days after the accident. If employee fails to give such notice, he shall not be entitled to physician or medical fees nor any compensation, unless it is shown the party had been prevented from doing so by reason of physical or mental incapacity or equally good reason. If this occurs, the party has 90 days after the occurrence of the accident to give notice to receive compensation. If death results, the same 90 days apply after the death (31). The objective of giving prompt notice is to allow the employer ample time to make a speedy examination, afford proper treatment, and protect himself against simulated or exaggerated claims. Oral notice of the occurrence of an accident resulting in injury is sufficient.

There is a 1-year statute of limitation for claims under Workmen's Compensation, which begins to run from the date of injury (32). Settlements under the Workmen's Compensation Act waive other remedies. An injured employee's acceptance of installments constitutes an election which stops him from resorting to any other remedy (43). Minors under the Act shall receive the same benefits as an adult under the Act. Amount of compensation depends on the injury and the average weekly wage of the employee.

A farmer who regularly employs less than three employees can elect coverage under Workmen's Compensation Act. This would mean injuries occurring to employees on the farm in the line of duty would be compensated by WCC. This would reduce the risk of loss by the farmer for accidents that result in injuries to an employee that he would normally have to pay the full amount. Also, if compensation is accepted by the injured party, this would bar any action against the employer under other claims.

Employer's Liability and Wrongful Death

The Employer's Liability Act statute defines or limits the occasions and extent to which employers shall be liable in damages for injuries to their employees occurring in the course of employment. In recent times, it has abolished the common-law rule that the employer is not liable if injury is caused by the fault or negligence of a fellow servant.

The Wrongful Death statute is a "statutory provision which operates upon the common law rule that the death of a human being may not be complained of as an injury in civil court. The cause of action for wrongful death is for the wrong to the beneficiaries" (5).

Case Fifteen (40)

On January 17, 1972, a widow filed a complaint against a farmer employer for the death of her husband which occurred on January 16, 1970. The complaint stated that the husband was employed by the farmer as a farm laborer and that his death was the result of the farmer's negligence in furnishing him a defective truck. This complaint, as amended, asserted a cause of action under both Employer's Liability Act and the Wrongful Death statute. The farmer pleaded the 2-year statute of limitations on wrongful death, in abatement of the action on the complaint. At the pretrial hearing, the widow contended that the farmer's liability is to her under Employer's Liability Act for failing to provide a safe place or means of work for her husband.

At the trial, the farmer moved for a directed verdict on the ground the action was not brought within 1 year from the death of the decedent. The court granted the motion and entered judgement. Then the widow filed a motion to set aside the judgement and for a new trial, asserting for the first time, in the face of the pretrial order, that this action was a wrongful death action. The circuit court denied the motion because claim for wrongful death was not in her pretrial order.

The widow appealed the verdict in favor of the farmer by the circuit court. This verdict was based on the applicability of the 1-year statute of limitations under the Alabama Employer's Liability Act. The Alabama Supreme Court held that the action, as evidenced by the pretrial order, was brought under the Employer's Liability Act, not under the wrongful death statute, and thus barred by the 1-year statute of limitations applicable to the Act.

The first time the widow ever explicitly stated her action was under the wrongful death statute was in her motion for a new trial. This contradicted her own contention, as evidenced by the pretrial order, that the farmer's liability was under the Employer's Liability Act. Also, the record contained no amendment to her complaint or motion to amend or objection to pretrial order. The pretrial order controlled the cause of action sought and was binding on the parties involved.

Legal Citations

When a personal injury is received by an employee in the business of the employer, the employer is liable to answer in damages to such employee, as if he were a stranger and not engaged in such employment, provided such liability is enforced in a court of competent jurisdiction, in the following cases: 1) the injury is caused by any defect in the condition of the ways, works, machinery, or plant used in the business of the employer, 2) the injury is caused by negligence by any person in the service or employment of the employer who has superintendence abilities while in exercise of such superintendence, 3) injury caused by negligence of any person in the service or employment of the employer, whose orders the employee conformed to and the injury resulted from his having so conformed, and 4) injury caused by the act or omission of any person in the service or employment of the employer, done or made in obedience to the rules or regulations of the employer, or in obedience to instruction given by a person with authority delegated to him by the employer. If the servant or employee knows of the defect or negligence and fails to give the information to the employer in a reasonable time or to some other person delegated with authority, the employer is not liable (33).

The Employer's Liability Act created a new cause of action by an employee against his employer for injury caused by the negligent conduct of a fellow employee. When applicable, employees that are not covered under Workmen's Compensation may bring action under the Employer's Liability Act, but this does not apply to cases controlled by the Workmen's Compensation Act (12).

The employer has a non-delegable duty to supply for use and keep in proper condition, tools, implements, and appliances used by employees for the business of the employer. Known defects should be repaired to keep the safety standards operational.

Where the right of action for wrongful death arises out of a personal breach of a common-law duty of the employer to an employee, whether the duty is nondelegable or not, or the breach of the duty by the employer's vice principal of a nondelegable common-law duty, and the case is not within the Workmen's Compensation Act, the personal representative may elect to proceed against the employer alone or proceed under the Wrongful Death Act, whose negligence or wrongful acts concurred with that of the employer in producing death (39). If the action is predicated on

the negligence of a fellow employee, not recognizable at common law, but which liability is imposed on the employer by the Employer's Liability Act, jointer is not permissible for reason that the measure of damages against one is punitive and the other compensatory only. The Wrongful Death Statute is punitive, but action for death under the Employer's Liability Act is compensatory (12).

Actions must be commenced within 1 year to recover damages for injury wherein a principal or employer is sought to be held liable for the act or conduct of his agent, servant, or employee (18). The limitation of 2 years does not apply to an action for death under the Employer's Liability Act because the two actions are separate and distinct (12). No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar or defense to any action brought to recover damages for personal injuries or to death of such employee (34).

Under the Wrongful Death Act, 1) a personal representative may commence action and recover damages for the wrongful act, omission or negligence of any person, persons, or corporation, his or their servants or agents, whereby the death was caused, provided the deceased could have commenced action for such wrongful act, omission or negligence if it had not caused death, 2) death of the defendant shall not abate such action, but may be reviewed by his personal representative and may be maintained even though there has not been prosecution, conviction, or acquittal of the defendant for the wrongful act, omission, or negligence, 3) damages recovered are not subject to payment of the debts or liabilities of the deceased, but must be distributed according to the statute of distributions, and 4) action must be commenced within 2 years from and after the death (21). Intention is to suppress and punish negligence, wanton, or intentional acts causing death of others.

A farmer who employs persons to work in his business should be aware of the statute of limitations, Employer's Liability Act of 1 year, and Wrongful Death Act of 2 years. The employer is liable for injuries or death as the result of defects in ways or items used in the business, negligence, specified acts, or omissions of acts. But if the employee knows of the negligence or defect and does not give the information to the proper people, the employer will not be held liable.

An employer has a duty to supply and maintain any items used by employees for his business. If not maintained in proper condition, an employer will be held liable for any injuries caused by the faulty items. Also, if death occurs because of improper upkeep, an employer will be held liable for the death of the employee. If an injury is the result of a negligent act by another employee, the employer shall be held liable for this injury.

SUMMARY AND CONCLUSION

Summary

The purpose of this study was to illustrate common legal situations and the economic losses suffered by Alabama farmers. Current laws pertaining to the legal situations were discussed and evaluated in an effort to show ways of minimizing or preventing losses in the future.

Ten types of legal situations were discussed. These were: 1) merchant, 2) independent contractor, 3) adverse possession, 4) easements, 5) parol evidence rule, 6) trespass, 7) homestead, 8) livestock laws, 9) nuisance, and 10) labor liability. Details of these cases are shown in table 1. Alabama law relating to these topics was discussed as well as comments and reactions of the farmers that were involved in each case.

Farmers, in some instances, can be classified as merchants for the products they produce and sell. When the farmer is classified as a merchant, his products will carry an implied warranty of merchantability. If the farmer holds himself out as having knowledge peculiar to the product involved in the transaction or if he hires an agent or broker who holds himself out as having a special skill peculiar to the practices or goods involved, he can be classified as a merchant for these transactions.

When a farmer hires an independent contractor to perform tasks considered intrinsically or inherently dangerous, e.g., aerial application of chemicals, the farmer can be held liable for damages done to a third party, be it person or property. Normally, a farmer is not responsible for the negligent acts of his independent contractor, unless the acts are considered to be inherently dangerous.

Statutory and common law adverse possession situations were discussed. It was found a landowner can lose ownership of property without receiving compensation. Under common law, adverse possession requires a 20-year period of time and under statutory law, 10 years. The basic requirements, actual possession,

exclusive possession, open and notorious ownership, and continuous possession are required by both types of adverse possession, but statutory law requires in addition to these, either color of title, paid taxes for 10 years, or derived title by descent. Also, a permanent easement or use of another's property can be created in 20 years under common law.

When a farmer enters into a written contract, he needs to be sure all the elements agreed upon during negotiations are included in the written instrument. If a dispute arises over the written contract and the element of the dispute was left out of the written instrument, the parol evidence rule will not allow the oral statement to be admitted for evidence if it contradicts the written contract.

When cutting trees on property that is close to the property of an adjoining landowner, farmers should be aware of where the boundary lines lie. A landowner can be sued for trespass and damage if trees are cut on another's property. The loss can be on the grounds of willful, intentional, or negligence against the trespasser in this type of case.

Normally, a claim of homestead cannot exceed 160 acres or a value of $6,000. However, if the debts of the estate are paid after death the value can exceed this amount. A farmer or his wife can claim the homestead right after the death of the other, and heirs of whichever becomes deceased can lose any claim to the property. Knowledge of what can be claimed as a homestead can save time and money in attempts to get fee simple title in property of the deceased.

Livestock producers can be liable for letting their animals wander at large if damages are caused by such animals. Damages can include that of property, such as crops, or personal injuries. Also, a livestock operation can be considered a nuisance if not operated properly. That is, if the operation of such livestock enterprise deprives a neighbor of the enjoyment of his property, it can be declared a nuisance by the courts. If the enterprises are managed properly and have been in existence for more than a year, it shall not be declared a nuisance so long as it was not considered a nuisance from the time the operation began. Enlargement of an operation that is not considered a nuisance can become a nuisance due to the change in size of the facility.

Injury or death of an employee can be covered by Workmen's Compensation Act, Employer's Liability Act, or Wrongful Death

Act. For a small farm operation to be covered by Workmen's Compensation, the employer and employees must elect to come under coverage of this Act. Employer's Liability Act has a 1-year statute of limitations for action to be covered by it. The Wrongful Death Act has a 2-year statute of limitations for which compensation can be received under it. Under all three acts the employee must be acting within the line and scope of his duties to be compensated for injury or, in the case of death, for the representative of the deceased to be compensated.

Factual evidence about the cases, Alabama statutory laws, and potential legal problems were discussed in layman terms. This should assist a farmer to understand the implications involved and indicate situations in which he should be aware of his legal rights and responsibilities.

Conclusion

Farmers need to be aware of their legal rights and responsibilities to prevent or minimize financial loss in case of a lawsuit. The legal situations in which a farmer may become involved can be costly to his business in both an economic and a time sense. The subject areas covered by this study indicated that more legal knowledge dealing with the operation of a farm business is needed. In cases in which farmers were interviewed, they stated they would have done things differently if they had known they could have been sued or forced to close down. If information is available, a farmer's recognition of a potential problem could save him damages from a lawsuit.

Economic damages were difficult to determine. Attempts to measure them depended on the individual situation. Being on the losing side of a lawsuit costs a farmer both time and money that he can ill afford to lose. Farming is a business where the person needs to work almost every day, therefore any time away from the operation is costly to the farmer.

More often than not, legal counsel is needed before a decision is implemented. Knowing there could be a potential legal problem could alter the original plan of the operation. Farmers who live in agricultural areas need to know the legal rights and responsibilities toward their employees and others in the community. By not living up to his obligations, a farmer can lose what he has worked a lifetime to build.

SUMMARY OF CITED CASES

Case	Type of case	Number of appeals	Decision	Estimated costs and losses**
Bradford* v. Northwest Alabama Livestock Assn.	Merchant	1	N.W. Ala. Lvst. Assoc. NAL	Large
Boroughs* v. Joiner*	Independent contractor	1	Boroughs	Small
Martin* v. Mansell*	Adverse possession	0	Mansell	Medium
Fits v. Alexander*	Prescription	0	Alexander	Large
Manefee v. Lowery*	Easement	0	Lowery	Small
Raidt* v. Crane*	Parol evidence rule	1	Raidt	Small
Wiley v. Wilson*	Trespass	0	Wilson	Small
Sibley* v. Adams*	Trespass	1	Adams	Medium
Jackson* v. Brantley	Livestock	1	Brantley	Small
Clark v. Moore*	Livestock	1	Moore	Small
Strange v. McClendon*	Nuisance	1	Strange	Large
Gregath* v. Bates	Nuisance	1	Bates	Large
Lacey v. Davis*	Homestead	0	Davis	Medium
Smith v. Thrower Nursery, Inc.	Workmen's compensation	1	Thrower Nursery	Small
Hardy v. Sawyer*	Employer's liability	1	Sawyer	Small

*Farmers.
**Small = up to $4,000; medium = $4,000-$8,000; large = $8,000 and above.

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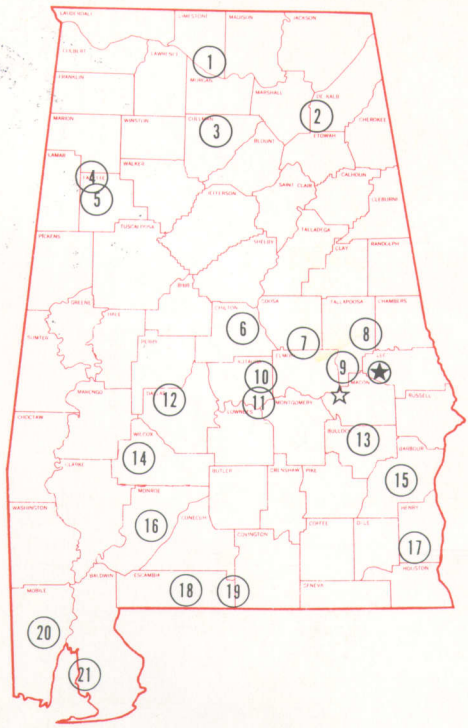
Alabama's Agricultural Experiment Station System
AUBURN UNIVERSITY

With an agricultural research unit in every major soil area, Auburn University serves the needs of field crop, livestock, forestry, and horticultural producers in each region in Alabama. Every citizen of the State has a stake in this research program, since any advantage from new and more economical ways of producing and handling farm products directly benefits the consuming public.



Research Unit Identification

★ Main Agricultural Experiment Station, Auburn.
☆ E. V. Smith Research Center, Shorter.

1. Tennessee Valley Substation, Belle Mina.
2. Sand Mountain Substation, Crossville.
3. North Alabama Horticulture Substation, Cullman.
4. Upper Coastal Plain Substation, Winfield.
5. Forestry Unit, Fayette County.
6. Chilton Area Horticulture Substation, Clanton.
7. Forestry Unit, Coosa County.
8. Piedmont Substation, Camp Hill.
9. Plant Breeding Unit, Tallassee.
10. Forestry Unit, Autauga County.
11. Prattville Experiment Field, Prattville.
12. Black Belt Substation, Marion Junction.
13. The Turnipseed-Ikenberry Place, Union Springs.
14. Lower Coastal Plain Substation, Camden.
15. Forestry Unit, Barbour County.
16. Monroeville Experiment Field, Monroeville.
17. Wiregrass Substation, Headland.
18. Brewton Experiment Field, Brewton.
19. Solon Dixon Forestry Education Center, Covington and Escambia counties.
20. Ornamental Horticulture Field Station, Spring Hill.
21. Gulf Coast Substation, Fairhope.