Legal Matters®

fall 2019

Injuries from agritourism increase

Fall is here. For many of us that means hours in front of the TV watching football. But for others, it means apple-picking, hayrides, corn mazes, cider and donuts. In other words, "agritourism."

There's a good chance you've never heard that term, but it's defined as agriculturally based recreational activities that bring paying visitors to a farm or a ranch. It provides a profitable revenue stream for smaller family farms that struggle to compete with large-scale corporate farming operations.

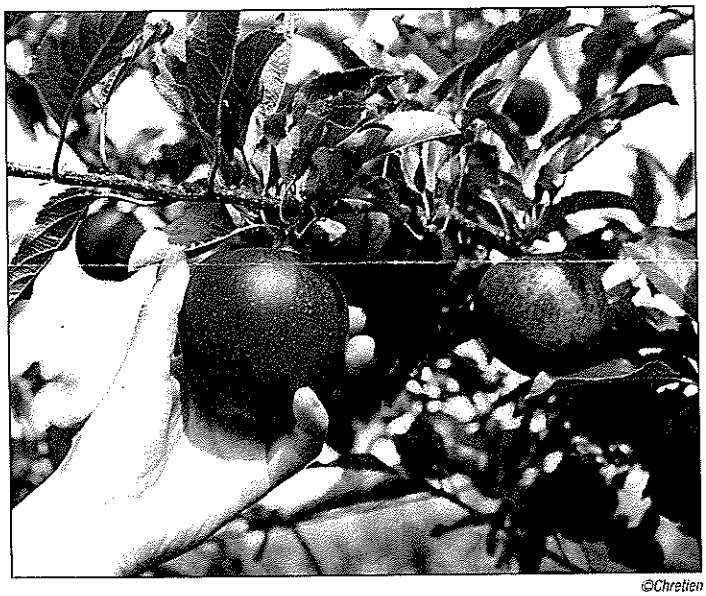
Many states have passed laws making it harder for tourists to hold farms responsible for injuries.

Tourist farms can make for a great family outing, but it's important to know that farms can be deceptively dangerous places. If you're not alert and aware of the risks, you or a family member could get injured or worse.

Take the case of Cassidy Charette, a 17-year-old high school student who suffered fatal injuries in 2014 while on a "haunted hayride" at Harvest Hills Farm in Maine when a Jeep that was towing a wagon flipped over.

Investigations after the crash showed that the Jeep's rear brakes didn't work right, and that the Jeep was hauling more than double its towing capacity.

Cassidy's family sought to hold the farm accountable, arguing that its negligence (in other words, its failure to be as careful as it should have been under the circumstances) wrongfully resulted in her death. The family appeared to have a strong case. The farm agreed to settle the case for an undisclosed amount, enough for Cassidy's family to fund a charity in her name.



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While Cassidy's case sounds like an extreme example, it's not the only one.

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FALZONE & WYLER
TRUSTWORTHY LEGAL REPRESENTATION
22 East Third Street, Media, PA 19063
(610) 892-8900
Toll-free: (866) 986-5647
falzonelaw@comcast.net www.falzonelaw.com

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Two-year-old Ella Feuhring was killed and her mother injured in 2014 while attending the annual harvest festival at a popular New Jersey tourist farm.

Somehow mother and child became trapped between two shuttle buses in a busy loading area. The farm settled in that case as well.

Less severe injuries have included animal bites and falls from ladders while climbing for high-hanging fruit, and kids suffering scrapes, bruises and bone breaks from rough play in bouncy houses or from climbing on tractors and haystacks.

Tourists have even been injured at farm stands by tripping over produce that fell from overloaded pallets and baskets onto the floor.

Many states, seeking to protect the economic boost agritourism provides to rural regions, have passed laws making it harder for tourists to hold farms responsible for injuries.

For example, in North Carolina, the law limits the liability of agritourism businesses for customers' harm as long as the farm posts a warning with large letters in a conspicuous location. The law specifically prevents customers from suing over any injury or death from a risk "inherent" to an agritourism activity.

Ohio provides farms with similar immunity from suit for agritourism-related injuries, defining "inherent risks" as those related to the condition of the land itself, the behavior of farm animals, the dangers of farm equipment and the risk of disease from contact with animals, their feed and their waste. In fact, more than half of states have enacted agritourism immunity laws of one type of another.

Meanwhile, even in states that haven't passed such laws, it can be hard to hold a farm fully accountable for agritourism injuries if the farm's liability insurance policy doesn't cover such injuries. In that instance, the farm may not have sufficient resources to pay out of pocket for serious harm.

But even if you're in a state with laws that protect the agritourism industry, it is important to call an attorney to discuss your options if you or a loved is hurt visiting a tourist farm. In many cases, such laws do not apply when a farm has engaged in "gross" (extreme) negligence. The law in your state may have other exceptions as well.

Preventing suits over website accessibility

Suits claiming that business websites and/or mobile apps aren't fully accessible to people with disabilities are increasing rapidly.

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In 2019, a quarter of such suits were brought against companies that had already been sued under the same cause of action. The suits were brought under the federal Americans with Disabilities Act.

The key to protecting your business from such lawsuits is to ensure that your website complies with Web Content Accessibility Guidelines 2.0.

In a recent case in federal court in New York, a legally blind consumer sued Kroger, claiming that the grocery chain's website wasn't accessible to the blind or visually impaired.

Kroger argued that the suit should be dismissed, claiming that after it was filed the company made all the necessary adjustments to its website to make it accessible.

The court decided that the efforts made the consumer's lawsuit moot. It commended Kroger's commitment to tracking future technological advancements that would allow it to continue to make the site accessible.

The court also said the suit should be dismissed because it was filed in New York, where Kroger has no retail presence and doesn't sell anything through its website.

In prior rulings, the same court rejected arguments that a consumer's suit was moot, saying the company hadn't conducted complete remediation efforts, or hadn't fully document them.

These rulings demonstrate the importance of complying with website accessibility guidelines and documenting those efforts.

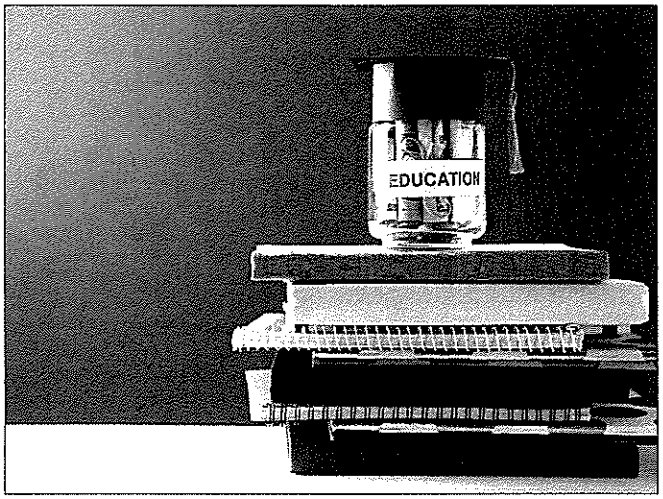
Consult a business attorney to ensure you are fully compliant.

Divorce agreements vague about college costs create risks later on

One of the most contentious issues in a divorce can be kids' college education.

For example, what percentage must each parent contribute? How will the college plan be funded? Will the parents be responsible for just tuition, or for room, board and expenses, too? How much say will each parent have on the choice of school? What if one parent's financial circumstances change for the better or worse?

Divorce clearly can have a significant impact on kids' college plans, even if children are still very young at the time of the divorce. That's why it's best to work with a good divorce lawyer to predict potential issues and address them properly in your divorce agreement, leaving nothing to chance.



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Take a recent New Jersey case. A couple had four kids, two of whom attended an in-state public university at the time of divorce. As part of the property settlement, the couple agreed to contribute equally to "all reasonable and agreed upon" college and secondary education costs above any financial aid the kids received. They also agreed to consult with the kids and each other about the "best education possible" in view of their particular circumstances and those of the kids.

The trouble started when the third child wanted to go to an expensive out-of-state school instead of the state university. The father said he couldn't afford it, but the child enrolled over his objection. At that point the father refused to pay half the costs, so the mother took him to family court, accusing him of violating the divorce agreement.

The judge determined that the father should not have to pay half the cost, since he did not agree to it. Instead, the judge ordered the father to pay what the contribution would have been had the kid gone to the state school, estimating the tuition to be $20,000 after financial aid, with 5 percent added each year for inflation.

Both parties appealed, and the New Jersey Appellate Division ruled that the lower court made a mistake, both by failing to weigh certain factors in the absence of a clear agreement and by engaging in "conjecture" regarding the cost the father would have paid for a state school.

The court further found that the best interest of the child was indeed to go to the private school. Now the case is going back to family court, where a judge may well order the father to pay half those costs.

Another interesting case arose in Massachusetts, in a case where a divorce agreement vaguely obligated parents to confer on "major life decisions."

The mother enrolled the son at the University of Arizona without formal consultation, but also without the father expressing any formal concerns at the time. The father subsequently filed a contempt motion in family court arguing that the mother violated the divorce agreement by engaging in a "unilateral action" that affected his financial obligations.

The court found no contempt, but still modified the father's financial obligations. The Massachusetts Appeals Court reversed, finding that the father hadn't sufficiently demonstrated a material change in circumstances, and remanded the case back for further findings. This father, too, might end up paying more than he thought he bargained for.

A lot of these situations, and the court costs that accompany them, can be avoided if a divorce agreement includes language that specifically addresses what happens when parents can't agree on the choice of college. Each state has its own laws, however, so consult with a family lawyer in your state to learn more.

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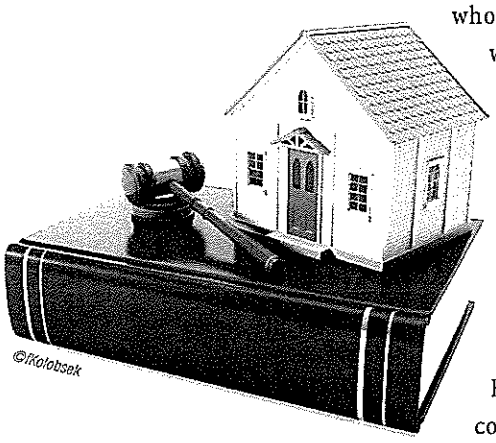
22 East Third Street, Media, PA 19063
(610) 892-8900 Toll-free: (866) 986-5647
falzonelaw@comcast.net www.falzonelaw.com

U.S. Supreme Court says yes to immediate taking claims



In a big change affecting property owners, the U.S. Supreme Court has ruled that people whose land is taken for public use without payment may, as soon as the property is taken, file federal lawsuits for constitutional violations of property rights.

The high court revisited the question of whether property owners have standing to bring §1983 claims under the Fifth Amendment in federal court when a taking occurs, or if they must exhaust all state court remedies first.

The court recently overturned a long-standing requirement that property owners must pursue all options for compensation in state court before bringing federal claims, saying owners may bring claims right away even if state courts have not considered the issue of just compensation.

The old requirement had been in place for nearly 35 years. The new decision found that the rule made it too difficult for property owners to exercise their rights under the federal takings clause.

The court also said the rule presented unfair obstacles that did not exist for people looking to bring §1983 claims based on other constitutional protections.

The decision makes it much easier for property owners to sue for federal relief.