

*The*

# Agricultural Education

October, 1981  
Volume 54  
Number 4

Magazine



**THEME: Teacher/Professional Liability**

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## Answering Two Big Questions About Vo-Ag

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leadership of the AVA. Some resolution of the problem is needed. Maybe there is no problem. If this is so, substantive reinforcement to prove that this is the case is needed — and needed now!

### What Is The Department of Education Doing For Vo-Ag?

Vocational agriculture education is administered through education agencies at the federal, state, and local levels. The Office of Education and now the Department of Education have provided program support and leadership for vo-ag since its founding. Recent discussions among groups of vo-ag teachers have increasingly focused on the best location of vo-ag at the federal level. Much of the talk is about how vo-ag would fail if administered in the U.S. Department of Agriculture. Would a change be in best interest of vo-ag?

Secretary of Education T. H. Bell spoke to the State FFA Presidents Conference in Washington in late July. He praised the FFA and how it had helped youth develop. He praised the role of Extension and research in farming. He further commented that the level of achievement in education has been declining in the United States and said that education needs what the FFA does for young people. (It is suspected that the decline in achievement is due to emphasis by government agencies on social issues and not on specific areas of learning.) Dr. Bell praised the Secretary of Agriculture, John Block, and noted that he was an FFA officer when in high school.

Secretary Bell's comments could be interpreted as a lack of support among the top leaders in the Department of Education for vo-ag and an insinuation that the USDA had good leadership that better understood vo-ag and agricultural industry. His comments about farming clearly in-

dicated a lack of understanding of today's agricultural industry. Further, the current federal administration has promised to do away with the Department of Education. Several possibilities on the future of it are now being considered.

In recent years the USDA has apparently been very supportive of efforts in vocational agriculture. Funds have been provided by various agencies of USDA to support some vo-ag activities. The common interest of vo-ag and USDA in agricultural industry appear congruent. Why not go ahead, move to the USDA, and get it over with? After all, the top leaders in the U.S. Department of Education apparently profess little interest in agricultural industry. (It should be noted that there are several individuals in the Department of Education who are very strong for vo-ag. These include Byron Rawls and Coleman Harris, and they are to be commended on their leadership for it.)

Vo-ag is concerned with formal education in the public schools. The USDA does not have a public school education mission, while the Department of Education does. Current procedures for administration of the FFA are rooted in the Department of Education. These would be endangered by a Department switch, but could probably be re-established.

Before any change is made, sound judgement must be applied to the problem. The decision must involve input from the leaders of vocational agriculture education. Supervisors, teachers, and teacher educators must synthesize the advantages and disadvantages. They must emerge with a strong, united commitment to vo-ag. The most important item is the quality of the education students receive in vocational agriculture. Any decision on the administrative location of vo-ag must recognize the need for quality education.

### The Answers

Individuals who would like to express opinions about these two questions should send letters to the Editor. Selected letters will be published without editing or comment. Your letter will be welcomed!

## LETTERS

"Letters to the Editor" is a feature to encourage dialogue among readers of the MAGAZINE. Selected letters will be printed without comment or editing. Your letter will be welcomed! (Send letters to: Editor, The Agricultural Education Magazine, P.O. Drawer AV, Mississippi State, MS 39762.)

Editor:

Some of the reactions to vocational education budget cuts in Washington are apparently based more on emotion than on logic. Some people believe that regular and continued increases in federal dollars always result in improved instruction and quality programs. While federal aid and the mandates that go with it have been a major factor in the development of strong vocational agriculture programs during the early part of this century, they have also resulted in some very unfavorable actions in recent years which have hurt programs immensely. Those who believe that all of our problems will be solved through increased

federal funds are reminded that federal legislation in 1968 and subsequent actions which grew out of that legislation almost eliminated vocational agriculture in some states. We need also to remind ourselves that inflation has been a major contributor to the financial squeeze in vocational education. Efforts to reduce inflation are not necessarily anti-education even when education is one of the programs to be cut.

We need more dialogue on this subject to show that those who advocate more federal aid and more federal control are not always the champions of vocational agriculture and neither are those who are proposing new ways of financing programs necessarily our enemies.

Sincerely,  
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## THEME

# Conducting Quality Programs with Minimum Liability



By ALFRED J. MANNEBACH,  
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Leaving students unattended in the classroom to answer the telephone. Having students operate power equipment in the land laboratory. Using a personal car to take students home after school to supervise occupational experience programs. Taking overnight trips to state FFA activities. Working with the judging team at a local farm after school hours. Letting students work on individual projects in the shop unsupervised. Placing a student at a local agricultural firm for occupational experience. Waiting until next week to replace that worn out grindstone. Having an excessive number of students in the laboratory classes.

These and many similar activities are normal for many teachers of vocational agriculture. Dedicated teachers want to be involved and active in "doing" activities. They want to provide the maximum learning experiences for their students. Maximizing student involvement and ensuring student welfare are their chief concerns. Never confined to textbook and classroom teaching, vocational agriculture teachers are planning, managing and supervising a number of projects and activities at all times.

Involvement in each of these activities, however, entails some risk. With the mood of the public to file suit more readily, teachers of vocational agriculture are well advised to inventory their activities, reassess their vulnerability to lawsuits, and check the status of their liability.

Most teachers of vocational agriculture recognize the potential hazards of getting students involved in learning activities. Whether teaching and supervising students in the classroom, the agricultural mechanics shop, the greenhouse, the school farm, the land laboratory, or placing students on farms or in agricultural firms for occupational experience, the teacher is vulnerable. The teacher is also vulnerable when conducting field trips, selecting students, transporting students to leadership activities, supervising occupational experience programs, and conducting many other routine activities.

Yet, almost all teachers of vocational agriculture would agree that involvement of students in these learning experiences and leadership activities is the heart of the vocational agriculture program. Take away student involvement in many of these excellent learning activities and the program will soon vanish.

The primary question for vocational agriculture teachers to answer then is, "How can I conduct a program of maximum quality for my students, yet minimize my potential liability?"

The authors in this issue are not advocating that you as a teacher curtail the relevant, beneficial learning and supervisory activities which have made the program of vocational agriculture so successful over the years. Rather, they

do offer suggestions regarding how you can incorporate valid precautions into your daily and yearly repertoire of activities to maximize quality involvement for students and remain on safe ground regarding liability issues.

After reading this issue, each person should have (1) a better idea of the areas in which he or she is particularly liable, (2) familiarity with basic guidelines to follow to limit professional liability, and (3) a knowledge of some of the basic legal terminology and its meaning. The intent is not to provide legal advice, but to increase teacher awareness of ways to ensure student welfare and to minimize risk. Qualified legal staff should be consulted for advice on specific cases.

Every teacher of vocational agriculture is urged to read this issue and keep it for further reference. In my role as theme editor for the issue, I have found the articles to be informative and professionally relevant and beneficial. I trust that you will, too.

### The Cover

As an educational program which makes considerable use of first hand experiences, vocational agriculture teachers may be in positions of increased liability. This photograph shows students and their teacher out of the classroom for hands-on learning. (Photograph courtesy of the National FFA Center.)

### SEMINAR PROCEEDINGS AVAILABLE

The Proceedings of the National Agricultural Education Seminar held in July, 1980, have been distributed. One copy was mailed to each participant, head state supervisor of vocational agriculture, and head teacher educator for vocational agriculture.

A few copies of the Proceedings are still available. If you would like a copy, please request it from the Editor of THE AGRICULTURAL EDUCATION MAGAZINE.

# How Quality Vo-Ag Programs Impact Liability

Vocational agriculture teachers who develop and carry on innovative curriculums that give students opportunities to participate with "hands-on" learning experiences are sometimes those individuals who suffer the greatest risk of becoming involved in a legal suit due to student injury resulting from the learning experiences.

Many vocational agriculture instructors "play it safe" by limiting student learning experiences to those which involve demonstrations by the teacher, viewing of films, and field trips to observe others performing tasks. This may be better than sitting in the classroom reading booklets or other materials.

This "play it safe" attitude on the part of the teacher, local school administration, and Boards of Education may be the major reasons why young people today could be accused of being the greatest group of "watchers of work" in history. No person can really learn about a job and the skills and competencies necessary to become successful in it without actually getting "hands-on" experiences.

Most vocational agriculture educators believe that supervised occupational experience is the best means of delivering "hands-on" experiences for students. It must be remembered, however, that in our early years these types of experiences were taught at the school and practiced at home under parent supervision with assistance from the vocational agriculture teacher.

Over the years, the vo-ag curriculum has changed so that it now involves greater varieties of students from more diverse family backgrounds. The school is expected to offer more of the skills and competencies for students which in turn places greater legal burdens on the vocational agriculture instructor.



Hands-on experiences are necessary in vo-ag even though teacher legal liabilities may be increased. This photograph shows the Sycamore FFA Chapter President operating the FFA-owned combine.

By JIM GUILINGER

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The philosophy of American society has also changed. Teachers at one time expected and received a high degree of community respect as professional persons. This has changed. Vocational agriculture teachers must make their own personal decision as to the limits they will accept involving the risk of being held liable for possible injuries or other activities conducted in or near the school under their direction.

At Sycamore High School, the vo-ag department operates extensive livestock, farming, horticultural, mechanical, and travel activities which involve the entire enrollment of vocational agriculture students. We are concerned about liability activities for which the faculty, administration, and Board of Education could be held responsible. The number of areas are so vast that a person might have difficulty listing all the possibilities. After identifying them, one might choose to not even offer a curriculum in vocational agriculture due to the possible risks.

Dwelling on the negative or possibility of liability will surely bring about a law suit. In my early years, I worked under a local superintendent who constantly worried about our student involvement in farming a small FFA plot and the possibility of being sued if a student was injured. We never had any liability suits. If you worry and talk about your liabilities long enough, someone in your community will oblige you with a legal problem.

How can we develop strong programs which involve students and provide training in real working situations? Sound program planning procedures should be followed. Teachers of vocational agriculture must:

1. Study the community and its leadership to determine the social and community attitude toward the vocational agriculture program.
2. Learn how the administration and local Board of Education feel about the vocational agriculture program.
3. Use an advisory council to get community feelings and, in turn, support his/her personal views about a quality vocational agriculture program.

4. Develop SOE programs for every vocational agriculture student.
5. Require every student to be a member of the FFA in order to learn leadership skills for use in later life.
6. Visit all students at their homes and observe their SOE programs.
7. Know the parents of every vocational agriculture student. When parents know the instructor on a personal basis and they learn that you, as a local teacher, care about their children and their achievements, only the most severe causes will likely bring about legal action.

8. Understand that people expect you to conduct yourself as a professional at all times. You are an image for youth to follow. You chose this profession and, rightly or wrongly, you are copied by your students in almost every endeavor you perform.

None of those eight points are new. I learned them at the University of Illinois under Dr. H. M. Hamlin and his staff many years ago. Their soundness has stood the test of 30 years of teaching. They will do the same for any other intelligent vocational agriculture teacher.

# An Overview of Teacher/Professional Liability

Under certain conditions teachers can be held liable for their actions in a court of law. Such lawsuits have been relatively rare in the past and many educators have viewed such liability as "something that happens to someone else."

However, conditions are changing and legal action against teachers and other professionals in general is increasing. There is greater emphasis on the rights of the individual, including youth, in society at large. Further, many students currently in school are products of the permissive child rearing philosophy of the 1960's and consequently are less accepting toward school authority. The increase in violent acts committed in schools<sup>1</sup> is a symptom of that attitude. In short, professional liability is currently a reality in our profession.

To deal with this reality, teachers need to be aware of both their rights and responsibilities. The question of liability involves federal and state education laws, local board of education policy, and the rights of students, parents, and teachers.

## Federal and State Education Laws

Education in the United States is essentially a function of the states. That is, the states have legal responsibility and retain all rights not specifically delegated under law to the federal level. Also, state legislatures have delegated authority for certain elementary and secondary school decisions to local boards of education. It is important to remember that state law varies considerably from state to state, as do local board of education policies within the same state.

## Teacher Rights

Teacher rights include academic freedom, freedom of outside utterance and association, and employment issues. While all three areas have implications for professional liability, employment issues have the greatest potential for litigation.<sup>2</sup>



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## Students Rights

Student's rights have been clarified and defined by courts over the past decade. The areas of student rights are discrimination, records, searches, religion, freedom of speech and assembly, publication, distribution and possession of literature, suspensions, expulsions and involuntary classifications, and miscellaneous issues which include grooming and dress codes, education for excluded students, and corporal punishment.<sup>3</sup>

## Parent Rights

Seven important, legally-established, parent rights have been listed.<sup>4</sup> Two of the seven have implications for individual teachers; the first is the right to equal educational opportunities for both boys and girls, and the second is the right to receive compensatory services for handicapped children. The other five parents rights involve decisions by school administrators, boards of education and state legislators, rather than individual teachers.

## Potential Areas of Liability

The challenge to teachers is to be knowledgeable about and avoid situations where professional liability can be incurred. Neither good intentions nor ignorance of the law are sufficient defense against legal action for liability. Ad-

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## An Overview of Teacher/Professional Liability

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ditionally, vocational teachers have more potential for liability due to their involvement in many activities with students in laboratories and outside the school. A discussion of potential areas of liability for teachers follows.

**Transportation.** The transporting of students is closely regulated to protect the health and safety of students in most states. The U.S. Department of Transportation has regulations and guidelines which are often further supplemented by state regulations and guidelines. In addition to the regular operator's license, specific instruction in transportation and vehicle inspection are among the requirements to transport students in New York State.

Additionally, school policy may limit or forbid driving of private vehicles by teachers and/or students to "away from school" activities. Teachers should avoid liability by being knowledgeable about and following local board of education policy and state law on transporting of students.

**Student Discipline.** The major areas of student discipline relating to liability for teachers are corporal punishment, searches and seizures, grades and records, and dress and hair styles.<sup>5</sup>

Although **corporal punishment** has been upheld as constitutional by the U.S. Supreme Court, such punishment may be banned by states and local boards of education. Further, minimal due process requirements for application of corporal punishment must be followed. These include informing the student beforehand except in the instances of extreme disruptive/antisocial behavior, presence of a second school official, and written notification to parents on request.

States may ban corporal punishment by statute or policy. The use of corporal punishment in states where it is banned is illegal.

Local boards of education can pass policy on corporal punishment within state policy and statutes. Such local policy may ban, restrict, or allow use of corporal punishment. Where passed, local policy has the force of law.

Even where permitted, corporal punishment may not be "excessive," "unreasonable," or with "malice." Further, other statutes on child abuse, and assault and battery may be cause for civil action.

Some general standards for excessive or unreasonable corporal punishment include giving more than three licks with a paddle or leaving bruises or marks, striking other than on the buttocks, and causing any temporary or permanent injury.

In general, potential liability from use of corporal punishment is considerable and it is prudent to avoid use of this means of discipline.

**Searches and Seizures** can cause legal problems. Searches means looking for items not permitted in schools such as drugs and weapons. Seizure is the taking of such banned items.

The principle of the school serving "in the place of

parents" to supervise students applies to this area. In general, the searching of students' lockers, desks, etc., is permitted. Also, student's person and possessions may be searched on reasonable suspicion. However, searches should be done by school administrators, not by individual teachers.

**Grades and records** are two areas with liability implications for teachers. In general, grades are supposed to denote student achievement in the subject. The use of other criteria such as student attitude and attendance needs to be justified in terms of the course objectives. In vocational subjects, there is a case for development of positive job attitudes as one primary course objective. Confidentiality rules for records should be followed.

Under certain conditions schools may regulate student **dress and hair styles**. The conditions are health, safety, and to avoid educational disruption. Written notification about problems to students must provide reasons. Be sure to follow school policy in this area.

**Discrimination** is illegal. Equal educational opportunity must be provided for both boys and girls. Therefore, student selection or differential treatment based on sex is illegal. Discrimination by race or religion is also illegal. Boys and girls must be accorded equal treatment.

**Education for Handicapped Students.** The Education of all the Handicapped Children Act of 1975 (PL 94-142) has had considerable impact on agricultural education. Mainstreaming and the use of agricultural subjects such as horticulture as a focus for handicapped classes continues to increase. Failure to provide appropriate vocational instruction in agriculture, such as not teaching an appropriately placed student, is subject to litigation by parents in civil court.

**Safety.** Teacher responsibility for providing safe conditions for students during instruction activities is the most challenging area of liability. Such liability occurs both by actions taken and not taken. The key issue determining teacher liability is negligence. Was safety instruction provided to students? Was the machine safe to operate? Was adequate supervision provided? Did the teacher act judiciously to prevent student injury in a crisis situation? Were the required safety devices worn by students or in place on the machine? Was emergency safety equipment (such as fire extinguishers and eye washer) on hand and operable to prevent or minimize student injury? Was the student physically and mentally competent to operate the machine? These are questions that must be answered in the affirmative to avoid liability.

Safety considerations for mainstreamed students is an emerging factor as special education students are placed in vocational classes. Actions by volunteers and aides under teacher supervision may also involve teacher liability.

### Limitations of This Article

Information in this article has been mainly synthesized from Phi Delta Kappa Foundation Fastback Series publications. A simplified and preliminary introduction to a complex legal area has been presented. The intent is not to provide legal advice, but rather to orient readers to major areas where liability tends to occur. Qualified legal staff should be consulted for opinions on specific cases.

## Liability Protection

Teachers may be covered by school insurance for instruction-related activities. Additionally, state level organizations of the National Education Association (NEA) and the American Federation of Teachers (AFT) provide legal services as part of services to members. However, the teacher may still be held personally responsible for negligence under some circumstances.

Professional liability insurance is available as part of homeowner policies and through professional organizations such as the American Vocational Association (AVA). The cost is approximately \$10 per \$100,000 coverage. Such coverage is carried by many educators and should be seriously considered.

## A Fact of Life

Professional liability is now a fact of life in the education profession. Teachers can reduce the chances of incur-

ring liability by being knowledgeable about, and following federal and state law, and local board of education policy. The areas where liability are most apt to occur are transportation of students, student discipline, discrimination, and safety. Professional liability insurance is available to teachers and should be considered.

### References

1. Berger, M. VIOLENCE IN THE SCHOOLS: CAUSES AND REMEDIES. Bloomington, Indiana: Phi Delta Kappa Foundation Fastback 46. 1974.
2. Flygare, T.J. THE LEGAL RIGHTS OF TEACHERS. Bloomington, Indiana: Phi Delta Kappa Foundation Fastback 83. 1976.
3. Flygare, T. J. THE LEGAL RIGHTS OF STUDENTS. Bloomington, Indiana: Phi Delta Kappa Educational Foundation Fastback 59. 1975.
4. Thomas, M. D. PARENTS HAVE RIGHTS TOO. Bloomington, Indiana: Phi Delta Kappa Foundation Fastback 120. 1978.
5. Connors, E. T. STUDENT DISCIPLINE AND THE LAW. Bloomington, Indiana: Phi Delta Kappa Educational Foundation Fastback 121. 1979.

## THEME

# Tort Liability and the Vo-Ag Teacher

For many years past, tort liability claims in education were almost non-existent. Historically, there have been many unfortunate accidents, both minor and tragic, which have occurred during public school connected functions or activities in almost every community in the nation. However, until recent years, these accidents were generally viewed as unfortunate incidents and, in most cases, civil law suits claiming professional liability on the part of school officials did not arise as a result. In recent years, however, a sharp contrast in public attitude has developed concerning professional liability in education. Tort liability has become a "household" term among educators and the threat of court action claiming professional liability has dramatically increased. Today, one of the most vulnerable areas in which teachers may find themselves in court is in the area of negligence in a charge of tort liability.

## Definition of Tort

Tort liability has been defined as the responsibility for any civil wrong independent of contract. Generally, there are two recognized types of tort liability; intentional and unintentional. Unintentional, of course, most directly involves the vocational agriculture teacher. In the case of unintentional tort liability, the prevailing opinion on the part of the plaintiff is that the teacher has failed to maintain an acceptable standard of conduct by being negligent or careless and through this has injured another person. To prove this type of claim or charge, the plaintiff must show that the defendant owed him a duty, the duty was breached, and an injury was sustained as a result.

## Basic Duties

The courts have generally held that a teacher owes three basic duties to his/her students. These duties include ade-



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quate supervision, proper instruction, and maintenance of all equipment for which the teacher is responsible. Proper performance of these duties is extremely critical in vocational agriculture because of the nature of the program. In other words, the threat of tort liability may not be quite as great to the English or history teacher as the vocational agriculture teacher because instruction is not directly related to proper performance of dangerous skills, there are fewer field trips and youth leadership organization activities, and there is no equipment to maintain. In short, the number of vulnerable areas is much greater in vocational agriculture than most other general education programs. Other programs in the public schools which could be grouped with vocational agriculture as vulnerable programs are selected vocational industrial education programs, some industrial arts programs, drivers education, athletics, and possibly chemistry.

In an effort to provide maximum safety for all students under the teacher's supervision and to protect the teacher from possible civil law suits, it is of utmost importance to adequately supervise students at all times. This is especially true during the designated times that the teacher is

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## Tort Liability and the Vo-Ag Teacher

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responsible for the students. This includes adequate supervision during the regularly scheduled in-school classroom/laboratory periods, field trips, and overnight as well as one-day trips to FFA livestock shows, conventions, leadership contests, judging contests, and other school-related activities. In the case of regularly scheduled classroom/laboratory periods in which teachers have the responsibility for a group of students, students should never be left unattended. During this time, the teacher becomes vulnerable to a charge of negligence for even making or answering a telephone call in the case of an accident.

Proper instruction is particularly important in the vocational agriculture program. Students must be taught how to properly use hand tools, power tools, and other shop-related equipment in order to minimize personal injury. Students should always be taught shop safety and general theory in the classroom before being allowed to get hands-on experience in the laboratory. After being taught shop safety in the classroom, students should be required to successfully pass a comprehensive safety exam. In an effort to make parents aware that shop safety has been taught, it is generally a good practice to have each student take the safety exam home, for signing by parents. After the exam has been signed, it should be returned to the vocational agriculture teacher who should permanently keep it on file.

Another important practice before allowing any student to use the equipment in the laboratory is for the teacher to demonstrate how to properly use the equipment. After the teacher has demonstrated the proper use of equipment, each student should be required to demonstrate how to properly use the equipment (at least the most dangerous equipment) while under the supervision of the vocational agriculture teacher. Some educators have labeled this practice as time consuming and even impractical; however, if the teacher intends to maximize safety instruction and more thoroughly protect herself or himself, it should be made a common practice. Psychomotor tests such as these, coupled with the cognitive test described previously, decrease the possibility of injury to students and increase the documentation of proper instruction which is needed to protect the teacher from a charge of negligence in case of an injury to a student.

The third basic duty which the courts have held teachers responsible for is the maintenance of all equipment assigned to the teacher for his/her program. Teachers should have a set system throughout the year in which equipment should be checked periodically to see if it is safe and in good working order. Results of the equipment checks should be documented and kept on file. Any equipment that is not working properly or found to be unsafe should be restricted from use until it can be properly repaired.

In reference to tort liability in general, most jurisdictions do not deviate from the rule that governmental entities operating public schools are immune from tort liability for personal injuries or death occurring in connection with such

operation, unless the entity has assumed liability by constitutional, legislative, or insurance-coverage provisions.

### A Case

A recent case emphasizes the tort liability trend as to school districts today:

A student sued a high school teacher and school board for injuries resulting from the defendant's alleged negligence in instructing in the use, and in the maintenance of a power saw that the student was using in the course of instruction. The Court dismissed the suit, based upon governmental immunity.

On appeal, the Court of Appeals affirmed as to the board, and reversed and remanded as to the teacher. It was held (1) that in the absence of a statute waiving its governmental immunity, the board enjoyed the sovereign immunity of the state, (2) that such immunity was unaffected by statutes waiving immunity with respect to school vehicles only, (3) that such immunity could not be extended to the teacher for his own alleged negligence, even though, while in the course of his instructional duties, he was performing a governmental function for the board, and (4) that the student had stated a good cause of action against the teacher.

### Immunity

The general rule is that a school district or school board is not subject to liability for injuries suffered by pupils of public schools in connection with their attendance, because the district or board, in maintaining schools, acts as an agent of the state and performs a purely public or governmental function or duty, imposed upon it by law for the benefit of the public, and for which it receives no profit or advantage. The important point in dealing with this "immunity" is to avoid being taken out of the "immunity umbrella of protection." Vocational agriculture is a governmental function of the school district, and as such, the administration is protected; but such does not so protect the vocational agriculture teacher, who does not properly administer his or her program according to the policies of the school district.

The school administration or school board can only be held liable in very limited circumstances. One example is where the board is proven negligent in its hiring practices whereby a teacher is hired who has a prior record of inability to deal with pupils. Other areas which, if proven, exist as exceptions to the "immunity rule" are:

- (1) the function in question is proprietary in nature rather than governmental;
- (2) where the function in question is ministerial, rather than discretionary or judicial governmental;
- (3) where the function is optional or permissible rather than mandatory;
- (4) where an attractive nuisance has been maintained which results in personal injury or death; or
- (5) where willful and malicious negligence exists.

The school board can best protect itself and retain its immunity by the careful review and following of the state

statutes, the declaration of a carefully drawn set of rules and regulations, and the instituting of a program of update and review. These practices along with effective counseling and communication on the part of school administrators should provide maximum protection from claims of liability.

### Be Conscious of Liability

In summary, tort liability in public school education is a topic that all teachers, school administrators, and school boards should be conscious of. There are several areas which possibly could make the teacher vulnerable to claims of professional liability. This article only attempted to identify and discuss a few areas of vulnerability. Other areas such as improper administration of discipline, lack of academic competence on the part of a student who has suc-

cessfully completed a program, and other moral and ethical issues have also become common claims of professional liability in education. All pre-service teacher education programs in agriculture should provide adequate instruction to prospective teachers on all aspects of professional liability and the consequences associated with it. School administrators should also provide intensive in-service training on the topic of professional liability to insure that all teachers are aware of and understand its implications. Also all teachers should take advantage of professional liability insurance policies which are offered through various professional teacher organizations. These policies are usually reasonable in cost and offer good coverage.

#### References

French, Larry. THE SCHOOL ADMINISTRATORS LEGAL HANDBOOK.

## THEME

# A Disease Called Litigation

Lawsuits against school personnel and school districts have been increasing at an exponential rate in recent years. In fact they are so prevalent and have spread so fast throughout nearly every facet of our schools that one might say litigation has reached epidemic proportions.

No area of the school is immune, but some are more susceptible than others. Vocational agriculture has become one of the prime targets for liability suits. When an injury occurs (or it is alleged that one has occurred) the usual charge is that a tort or civil wrong has been committed.

Injuries can and do occur on field trips, at judging contests, in the shop, and even in the classroom. The individual who has the dubious distinction of being listed first on the suit is usually the class instructor, followed in close order by the principal, the superintendent, and the school board. Today, suits of 100 to 200 thousand dollars are common, and million dollar suits are not uncommon! Your Master Charge and Visa credit cards will not go far toward paying off on such judgements!

### Will Insurance Help?

No thinking person would drive his/her car anywhere unless covered by liability insurance. The same is true of a teacher today — you must have insurance coverage to protect from suits due to possible negligence or lack of proper or adequate supervision. Many school districts carry insurance policies which will cover all their teachers. Check it out! If you're not covered and you are a teacher in a state where you do not have immunity from suit for torts, see your insurance agent or join a professional organization which offers a group liability policy. Even though you win the suit brought against you, attorney fees alone can mount up to several thousand dollars.

### Will Written Policies and Procedures Help?

Fortunately, courts do not ask you to guarantee the safety of your students; but they certainly do hold you to the

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standard of liability for foreseeable risks — those whose consequences a person of "ordinary prudence" would reasonably expect might occur. (By the way, the judge or the jury, as the case may be, decides what a "person of ordinary prudence" is.) However, the courts do expect you to have written rules and procedures to help insure the safety of our students. In addition, you should inform them orally of all those rules and regulations. You just can't overdo it. Oh, one other thing — you must enforce those rules and regulations — posting them and discussing them are just not enough. In other words, you must provide adequate supervision.

### What Is Adequate Supervision?

The answer to this question depends upon several factors, such as the age of the students and the nature of the activities in which students are engaged. In a tort case, in addition to the "reasonable prudent person" standard, three questions are asked. If the answer by the judge or jury is "yes" to all three, you have a problem, because you have been found to have committed a tort. In other words, three strikes and you are out. The questions or the essential elements of a tort are:

(1) Was there a duty of care owed? Teachers are responsible for the safety and well-being of the students in their classes or under their supervision, so the answer here is nearly always "yes" when the injury occurs in the shop, in the classroom, on field trips, or at judging contests.

(2) Was there a breach of that duty? If you leave

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## It's Your Fault!

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tion have been somewhat sheltered and immune from lawsuits. In recent years, this has changed and there have been lawsuits directed at both the instructor and his or her administrative supervisor. The administrator has also been ruled as negligent and responsible. Now, there is more response from some administrators to help in promoting safety. It's too bad accidents that caused injuries and suffering had to occur before they could see the need for supporting safety in the school system.

### What's Right, Not Who's Right

Better safety programs should be developed and pro-

moted because we don't want undue injury to people. There is much less physical pain and mental anguish if the accident never happens. The expense and effort of ACCIDENT PREVENTION are minimal compared to having to decide who's right.

#### References

- Bear, W. Forrest and Thomas A. Hoerner, *PLANNING, ORGANIZING, AND TEACHING AGRICULTURAL MECHANICS*. St. Paul, Minnesota: Hobar Publications, 1980.
- General Industry Standards, OSHA 2206, Washington: U.S. Government Printing Office, 1978.
- Handbook of Accident Prevention. Chicago: National Safety Council, 1970.

## THEME

# Teachers Can Protect Themselves Against Tort and Liability

Many teachers have heard the word tort and tort liability, and they express the notion simply as "liability." Yet teachers often do not know what tort really involves and harbor a fear of massive law suits over which the teacher has little control, nor resources, for prevention. These notions are not well founded. The teacher does, in fact, have a great deal of control over the threat of liability suits and has good resources for preventing them.

Tort as defined in the book *Law of Torts* by William L. Prosser, is "a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages." This says nothing more than a tort is one kind of legal wrong, for which the law will give a particular remedy. There are remedies other than action for damages which we will not mention since they are less likely to fit our situations in vocational agriculture programs. The basis for legal precedence in torts has been established by social norms as to what is unacceptable or unreasonable conduct. The common thread woven into all torts is the idea of unreasonable interference with the interest of others. This can occur through the act of omission as well as commission.

We happen to be in one of the subject areas where the opportunity for potential liabilities is high. We share this distinction with other shop instructors, as well as laboratory science and physical education instructors. Teacher versus pupil, pupil versus teacher, teacher versus teacher, pupil versus pupil, and other combinations surface as court actions growing out of school settings. Specifically the grounds for action in tort include: 1) intentional interference, 2) strict liability, 3) negligence and 4) defamation.

### Intentional Interference

Intentional interference and negligence are those grounds for legal action which surface most frequently in

educational settings. Intentional interference with an individual may be grounds for an action tort. This involves the intention of an individual to interfere with or invade the rights of another. Areas of intentional interference include:

- a) assault — an act or attempt, meaningly planned or not, to do some physical injury, but does not require physical contact,
- b) battery — physical contact with the intent to do harm, and
- c) interference with peace of mind — that is to inflict mental and personal anguish.

The elements of both assault and battery should be understood as they apply to intentional interference.

Battery is simply defined as physical contact with the intention to do harm. A person is protected from intentional and unpermitted contacts. This protection extends to any

part of the body or to anything which is attached to it and practically identified with it. Thus contact with a person's clothing, an object held in his/her hand, the chair in which one sits, or the horse on which he/she rides may be battery. It is not important that contact be brought about with a direct application of force, such as a blow, but it is enough that the defendant sets a force in motion which ultimately produces the result. In order to be liable for battery, it must be shown that the defendant had done some positive or affirmative act. The action for battery is not the hostile intent of the defendant, but rather the absence of consent to the contact on the part of the plaintiff (the person bringing suit).

Assault, on the other hand, can be differentiated from battery by the fact that actual contact is not necessary, just the apprehension of a harmful or offensive contact with the person. Many times assault and battery are used together. In many states you may touch when there is a required duty. For example, the duty to stop fights (with reasonable force) or guide a disruptive student to the office (being careful not to use excessive force) may make touching an act permitted under the law. This fact, however, would not necessarily shield a teacher from the possibility of being charged with assault and/or battery. Many states have had a rapid rise in assault charges in recent years. Recent Supreme Court findings and consumer advocates have opened legal paths to remove the shield of professional protection which governments and their representatives once enjoyed. The teacher now becomes more visible and a more personal target for any dissatisfied parent or student.

### Strict Liability

Strict liability is a concept devised by the courts to place liability for an injury on the person best able to bear the burden. It is generally used only if fault for an injury cannot be traced to a specific individual. While fault is not a prerequisite to a liability in these cases, the courts have generally required that the defendant has caused some unusual hazard to exist.

### Negligence

Negligence is the third ground for action in tort. It is defined as conduct falling below an established standard which results in injury to another person. Four elements establish the conditions for negligence.

**Duty.** The teacher who does not protect his or her students from unreasonable risks may be negligent. For example, if a student's sweater gets caught in a lathe, negligence may be found because there was a failure to provide aprons.

**Failure.** The teacher who does not exercise an appropriate standard of care may be negligent. For example, an appropriate standard of care would be for the teacher to provide proper and correct instruction. However, written instruction is not enough. There must be instruction by word and action. Some cases to illustrate are as follows:

**New York Case:** A gym teacher was held liable in a soccer mishap. The court cited two factors: (1) reasonable care in demonstrating includes an explanation of safety precautions, and (2) teacher admission that he had not instructed the students about what to do when two players

meet the ball at the same time. One must not only instruct in how to use, but also explain hazards and how to avoid them.

**Maryland Case:** A student who was injured on a trampoline didn't follow instructions. The Court ruled that charges were "second guesses" about instructional techniques. The cause was the failure of the student to follow instructions. No liability was found.

Foreseeability is an important concept. One is expected to have the necessary expertise to foresee possible harm. No liability exists if proven it was an accident. Webster defines an accident as, "an event occurring by chance or arising from unknown causes."

**California Case:** Students were outside for a safety lecture. A student was playing with a knife. The knife struck a drawing board, deflected, and put out another student's eye. The Court indicated that there was sufficient evidence found from which a jury might infer that the teacher knew or should have known that the knife throwing was going on and that he was inattentive and careless in failing to observe and stop it before the injury occurred.

*The teacher's conduct must be the proximate or legal cause. For example, a teacher is expected to provide proper personal attention and supervision. If the teacher leaves the room, the mere absence is not a basis for liability.*

**Maryland Case:** The teacher left the room and a student was injured during that period of time. Initially the teacher lost the case, but on appeal, the court held that the teacher's absence was not the cause of the injury.

The test is whether the presence of the teacher in the room would have been likely to prevent the injury. The more dangerous the situation, the more careful the supervision must be. Consider the dangers caused by long hair. In Minnesota in 1969, the courts said the teacher could require hair nets or hair tied back if activity the student was engaged in was hazardous to the long-haired student.

The common test for negligence appears to be, "Did the teacher act in a more careless manner than a reasonable and prudent person would under the same circumstances?"

### Defamation

Defamation is the scandalous communication to others which diminishes the good name or reputation of a person. Defamation may occur by libel, which is defamation by written communication, or by slander, which is defamation by word of mouth.

In considering the legal aspects of the job, vocational agriculture teachers should become familiar with the implications concerning all teaching responsibilities, whether in the shop, greenhouse, or classroom, or on the school farm, student's farms, or field trips. Each situation should be studied and determinations should be made, first how to avoid legal action, and second, what protection and assistance are available if you are summoned or sued.

### Protecting Yourself

Much can be done to protect yourself, fellow professionals, and students from legal actions growing out of your job as a teacher of vocational agriculture. The following are suggested for your consideration:

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## Teachers Can Protect Themselves Against Tort and Liability

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1. Keep a record of when rules and regulations were announced or distributed.
2. Record all equipment and machine maintenance that has been performed.
3. Keep all equipment and machines in a safe, operable condition.
4. Require safety tests on all machines by each student.
5. Allow no machines to be operated without authority.
6. Properly instruct students in all safety procedures.
7. Always demonstrate correct methods and procedures before allowing students to utilize facilities.
8. Practice safe procedures at all times and insist that all others in the room do the same.
9. Never leave students alone in the room with operable equipment.

What should one do when an injury occurs? From a personal liability standpoint, the bare minimum requires that a person should:

1. Immediately report any pupil injury to the proper administrative channels.
2. Never volunteer to pay medical or property damage bills.

3. Never relate the incident to any person representing the student or the student's parents without first seeking the advice of counsel.

### Summary: Be Reasonable and Prudent

If a teacher acts in a reasonable and prudent manner, there is a good chance of not being found guilty or liable should tort action arise. Teachers should be familiar with the tort liability laws in the state where they teach. Further, teachers should have liability insurance coverage in case it may be needed. By safeguarding the welfare of their students, teachers are safeguarding their personal lives against the ravages of tort liability.

#### References

- William L. Prosser. PROSSER ON TORTS, 2nd edition. St. Paul, Minnesota: West Publishing Co., 1955.
- "Professional Liability Protection." AMERICAN VOCATIONAL ASSOCIATION JOURNAL. Washington, D.C., September, 1977.
- Maryland State Teachers Association Actionline. QUESTIONS AND ANSWERS CONCERNING THE NEA-MSTA LIABILITY INSURANCE. September 1, 1976. David E. Sawyer. WHAT YOU SHOULD KNOW ABOUT THE LAW AND LIABILITY. Industrial Education Magazine. March 1974, Vol. 63, No. 3.
- Cooper, Dudley and McCarty. "Student Injury and Teacher Liability — A Self-Instructional Unit". Agricultural Education, Virginia Polytechnic Institute and State University, Blacksburg, Va. 24061, 1974.
- Alexander, Kern and Ruth Alexander. TEACHERS AND TORTS: LIABILITY FOR PUPIL INJURY. Middletown, Kentucky: Maxwell Publishing Co., 1970.
- Alexander, Kern, Ray Corns and Walter McCann. PUBLIC SCHOOL LAW. St. Paul, Minnesota: West Publishing Co., 1969.
- Kigin, Denis J. TEACHER LIABILITY IN SCHOOL-SHOP ACCIDENTS. Ann Arbor, Michigan: Parkken Publications, Inc., 1973.

## BOOK REVIEW

WHEN YOU PRESIDE, 5th edition, by John D. Lawson, Danville, Illinois: The Interstate, 1980, 182 pp., \$8.95.

The book is divided into three major parts. Part one deals with the general topic entitled "The People." Included in this section are discussions about people in groups, various and respective leadership styles that operate within a group, and concepts which begin to build a case for understanding one another. This section sets the stage for the roles that people play. Considerable detailed information on dynamics of group action was gleaned from the book entitled "Dynamics of Group Actions" written by Dr. D.M. Hall. This helps the reader begin to understand the various roles that people play as they work within a group. The section on leadership styles is short but does a good job of outlining the various types of leadership roles including the dictatorship, the benevolent leader, the unpredictable leader, the responsible, orderly leader and the democratic leader.

Part two of the book is entitled "The Technique." This section deals with the

various leader responsibilities. A good leader develops agendas and assists people in getting acquainted with each other and learning to work together. This section also addresses the awareness, anticipation and emotional factors influencing group motivation. Details in encouraging people and maintaining their interest are clearly illustrated.

Included in the Techniques section are outlines of how to utilize the problem solving method. Mentioned are identifying the various ways to identify a problem, who might bring that problem forward, and how the leader might assist a group through the thinking process of problem solving. Additional activities and methods discussed include: the buzz group, brainstorming sessions, role playing and "special things" kinds of activities.

The third section entitled "Formalities" presents the key activities needed to make a meeting operate. Several methods of presenting information to a group — panel discussions, symposiums, and forums — are discussed. Other areas examined in the book are:

how to invite and introduce speakers; role and functions of committees within the organization; and the practical application of how to activate within a group through nominations, elections, and team building. It also has a brief section on parliamentary procedure and developing formal leadership responsibilities.

The author has had a rich and varied background and experience which makes him uniquely qualified to develop this kind of book. The book, by its own preface, is designed for people who are thrust into the leadership role. The preface of the book states, "This book is written for my neighbor across the street and for all those thousands of people like her in this country of ours: the men and women who are willing to step forward and take the lead in community, civic and business affairs." That particular lead sentence in the preface does an excellent job of identifying the audience for which this text book is directed.

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## THEME

# Could You Be Found Guilty?

By RODNEY W. TULLOCH

*Editor's Note: Dr. Tulloch is Associate Professor, Department of Vocational Education, University of Kentucky, Lexington, Kentucky 40506.*

Are you concerned about your legal responsibilities in the event of an injury-causing accident that could occur in a laboratory? All teachers are concerned about injury to students and their liability for such injury.

In 1979, the author mailed 53 letters to selected state departments of education and teacher institutions with agricultural education. Of the 27 replies, 20 indicated that they had no information or research available to their teachers on tort liability. A whopping 74 percent of the respondents that had no information available!

Tort liability is a problem that concerns all teachers. Tort action is the effort by the plaintiff (student and/or his or her parents) to recover damages for injury that allegedly occurred as the result of some action of the defendant. The plaintiff usually attempts to prove that the defendant had a duty and responsibility to protect him or her from injury. Then the plaintiff attempts to prove negligence in the carrying out of this duty. As a defense, the defendant usually attempts to show that the plaintiff had, in fact, assumed the risk of the activity or was contributorily negligent. Either case may absolve the defendant of liability.

This is over simplification of a very complex problem that faces each of us daily. However, it gives a basis from which to make some suggestions about how to protect our students and ourselves, as follows:

1. Teach Safety. This should be done not only as a unit once or twice a year, but daily. Use the best teaching available. Be sure also to set an example of safety.
2. Give a safety test over each area covered. Follow-up by giving students correct answers and have them copy them onto their test and then keep these as proof that the student was taught about safety.
3. Maintain your laboratory and equipment. Be sure that the laboratory is a safe place to work. Dangerous areas should be so designated, all guards and protective equipment should be in place and used. All equipment should be approved and in good operating condition.
4. Practice good housekeeping. Keep the laboratory clean.
5. Practice good organization. Good organization and management in the laboratory can help you avoid many problems.
6. Allow no horseplay. Many accidents occur directly or indirectly due to the lack of discipline.
7. Make sure the laboratory is properly equipped. It should include the correct safety equipment such as fire extinguishers, first-aid kits, and emergency shut-off switches.
8. Maintain membership in your professional organizations. You won't stand alone.



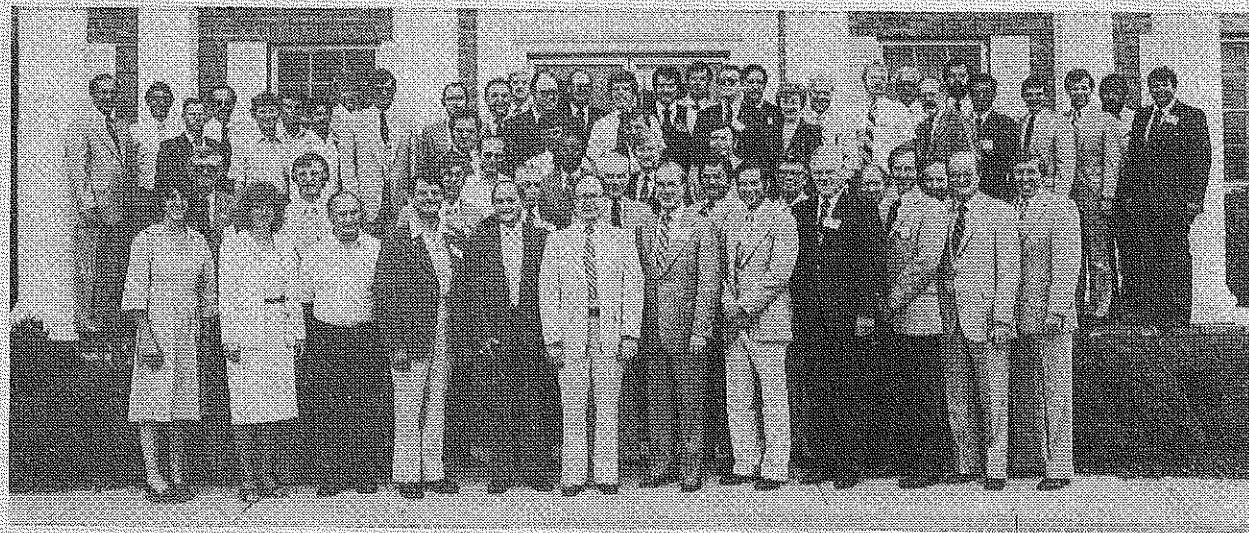
**Don't let this happen to you!**







# Stories in Pictures



The 1981 Update Meeting was held at the National FFA Center in July. The above photograph shows participants as they assembled at the National FFA Center. (Photograph from Coleman Harris, National FFA Center).



Horticulture students at Hawkeye Institute of Technology in Waterloo, Iowa, are shown learning to install an irrigation system in the school's nursery laboratory. (Photograph from Virgil Christensen, Hawkeye Institute of Technology.)