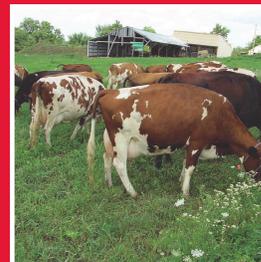


FIELD & FEEDLOT



ISU EXTENSION & OUTREACH—NORTHWEST REGIONS

MARCH 2013 ISSUE

Extension Web Sites

Ag Decision Maker

<http://www.extension.iastate.edu/agdm/>

Beef Center

<http://www.iowabeefcenter.org/>

Manure Management

<http://www.agronext.iastate.edu/immag/>

Pork Center

<http://www.ipic.iastate.edu/>

ISU Extension Dairy Team

<http://www.extension.iastate.edu/DairyTeam/>

Friends and Family on the Farm: Should You Allow Visits?

By Melissa O'Rourke, ISU Extension & Outreach Farm & Agribusiness Management Program Specialist

Sallee vs. Stewart: Does chaperoning a school tour, which includes a trip to the barn hay loft for kindergarten children to play on hay bales, constitute a “recreational use” as that term is used in Iowa’s recreational use statute found at Iowa Code chapter 461C?

The Iowa Supreme Court recently announced a ruling that raises issues about the wisdom of having visitors – including group tours or open house events – on the farm. It is worth taking time to review the facts of the case and the basis for the Court’s decision as farmers and landowners consider how to react to the recent announcement.

FACTS:

Each year, the kindergarten class of Sacred Heart Elementary School in Oelwein, Iowa made a field trip to the dairy farm of Matt and Diana Stewart (Stewart Land Holsteins) in rural Fayette County. The group of visitors included the children, teacher and several parents serving as chaperones. At least one member of the Stewart family stayed with the group in a tour guide role at all times. On May 18, 2010, the kindergarten class arrived at the Stewart farm for their scheduled visit. Accompanying the group as a chaperone was Kimberly Sallee whose daughter was in the kindergarten class. In the Court’s opinion, Kim Sallee is described as “a very large

woman.” For the dairy farm visit, the Stewarts arranged three stations for the students providing the following experiences: (1) riding a horse in a round pen; (2) feeding a calf a bottle of milk; and (3) going to the hayloft where the children could climb and play on hay bales. A Stewart family member was present at each station. At the hayloft station, Matt Stewart asked Kim Sallee and another parent to go into the loft ahead of the students to assist them at the top of the ladder. Matt Stewart assured Sallee that the ladder would support her weight. Sallee, the other parent, Matt and the children proceeded to the hayloft and the children played on the hay bales. The children were warned to not climb too high on the bales of hay. The Stewart’s hayloft is equipped with “hay drops” – rectangular holes through which bales of hay can be thrown to animals below. Stewarts ordinarily stack bales of hay across the hay drop holes when not in use to insulate the lower part of the barn. Prior to the kindergarten tour, Matt inspected the hayloft and stood on bales of hay covering the holes to make sure they would support his weight. He did not warn Sallee or others of the presence of the hay drops, nor did he warn them to not stand on these bales. While in the hay loft, Sallee stood on top of a bale covering one of the hay drops. The bale gave way, Sallee fell through the hay drop and broke her wrist and ankle/leg.

PROCEDURAL HISTORY:

Kim Sallee incurred medical bills and lost time from work. As is typical, the court’s opinion does not state whether the Stewart’s had liability insurance. However, it is worth noting that the on the website of the Stewart’s law firm, the list of representative clients is exclusively insurance companies. Assuming that the Stewart’s did have premises liability insurance, this lawsuit likely included what are known as subrogation issues – that is, Sallee’s medical insurer would seek reimbursement from Stewart’s liability insurer for medical bill payments. Additionally, Sallee would seek compensation for her pain and suffering, lost time from work, and her possible temporary or permanent disability due to the injuries she suffered by falling through the hay drop on the Stewart’s farm.

Sallee filed a lawsuit in August 2010. The Stewart’s argued that they should not be liable for Sallee’s injuries based on Iowa Code chapter 461C – the recreational use statute. By April 2011 the Stewart’s filed a motion for summary judgment – a motion that essentially asked the judge to dismiss the

case against them based on a shield from liability arising from the Iowa recreational use statute. While the district court initially ruled in favor of the Stewart's, appeals followed and the case eventually wound its way to the Iowa Supreme Court.

On February 15, 2013, the Court issued a 75-page opinion (including a special concurrence and a dissent) with in-depth discussion on a wide range of legal issues related to recreational statutes throughout the U.S. The lengthy opinion reads much like a scholarly law review article.

DISCUSSION:

Iowa's recreational use statute as found at Iowa Code chapter 461C provides in pertinent part that "an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes . . . or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for [recreational] purposes." The statute goes on to provide that "a holder of land who invites a person onto that land, without charging them, and allows the property to be used for 'recreational purposes' does not 'extend any assurance that the premises are safe for any purpose' or 'assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.'"

Of particular note, the Iowa statute provides a **definition** of "Recreational purpose" to include the following specific list of activities: "Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein." See generally Iowa Code chapter 461C.

The Court discusses the history and development of recreational use statutes as well as a detailed review of court decisions from around the U.S. Thereafter, the opinion includes the legislative history and analysis of Iowa's recreational use statute that was first enacted in 1967 and has thereafter been amended several times. The Court notes that at least half of the states with recreational use statutes containing a definition of "recreational use" include the phrase "includes but is not limited to." Iowa's definition does not include this or any other kind of "catchall provision" but rather includes a specifically enumerated list of activities. While there are few cases interpreting Iowa's recreational use statute, the opinion reviews those most relevant to the Sallee lawsuit.

Finally, the Iowa Supreme Court reached the facts of the Sallee case and considered this central question: *Did Kimberly Sallee's activities on the Stewart farm constitute a recreational use within the meaning of the Iowa recreational use statute?* The Court went through a detailed analysis, including the basic rules of statutory construction (legal interpretation). The Court concluded that "the activities which occurred in the hayloft do not constitute recreational uses under the Iowa statute." The Court's opinion holds that immunity is only available under the Iowa recreational use

statute if guests are on the property for the purpose of engaging in one of the activities specifically listed in Iowa Code chapter 461C. It is also worth noting that the Court focused on what Kim Sallee and the children were doing at the time of the injury. So, even though the kindergarten students engaged in horseback riding and calf feeding (which can be classified as "nature study") – because the students were playing in the hay loft and Sallee was a chaperone of that play activity at the time of injury, there was no immunity for the Stewart's under these facts. Thus, consider this scenario: A farmer or landowner allows a visitor to hunt on the farm property and at some point that individual stops hunting and engages in an activity not included in the statutory list of "recreational use" activities (such as collecting firewood). The visitor is injured while engaged in that wood collection activity. Under the Court's analysis, immunity under Iowa's recreational use statute is unavailable to the farmer/landowner – and liability is incurred for the visitor's injuries and damages.

IMPLICATIONS FOR IOWA FARMERS AND LANDOWNERS

After this ruling, Iowa farmers and landowners should give careful thought before inviting or allowing visitors to their farms – including large or small groups for the purpose of a field trip or tour, or individuals who seek (for example) to hunt, trap, fish or hike. Farms are full of hazards, and all farm operators must be particularly vigilant regarding farm safety – for family members and relatives, employees, and occasional visitors. However, in light of the *Sallee* decision, farmers and landowners should consider the following:

1. **ADULT Visitors:** While adults can be required to sign a release before visiting, this may be of limited use, if any. Should the farmer or landowner wish to consider this option, it should only be upon the specific advice of an attorney consulted for this purpose, and using a release drafted by that attorney (NOT a form found on a website). But remember – in Iowa, parents cannot sign a release waiving the claims of their minor children so there is absolutely no protection in this regard.
2. **PREMISES LIABILITY INSURANCE:** In consultation with your own legal professional, obtain formal, written assurance from your premises liability insurer that any damages incurred by any person in the course of visiting your farm or farmland are clearly and specifically covered by your policy – and that your coverage limits are adequate. Without such written assurance, farmers and landowners should refrain from such activities. Again, farmers and landowners should seek individual legal advice in this regard.
3. **LEGISLATION:** Contact your legislators and ask that the Iowa statute be amended to specifically include agricultural or farm-based activities – tours, 4H groups, school and other youth groups – to include their teachers, parents, chaperones. While we should always try to care to minimize dangerous conditions on our property, accidents do

happen. Specifically, the Iowa legislature will need to study what language is needed to abrogate the legal effect of the *Sallee* case.

As always, each reader should contact their own attorney and insurer to obtain legal and liability advice based on their own situation.

Note: Iowa State University Extension & Outreach does not provide legal advice. Any information provided is intended to be educational and is not intended to substitute for legal advice from a competent professional retained by an individual or organization for that purpose.

On Farm Research in Northwest Iowa

By Joel DeJong, ISU Extension & Outreach Field Agronomist

Iowa State University has a long-standing relationship with Iowa corn and soybean farmers. As a part of this relationship, ISU works to provide quality, unbiased research data to assist in the decision-making process on farm operations. In 2006, Iowa State began to expand that commitment, with the assistance of northwest Iowa farmers, by conducting research on their farms. In 2011, ISU Farmer-Assisted Research and Management (FARM) was established to expand the northwest Iowa program to the rest of the state through Iowa State University Extension and Outreach field agronomists and ag specialists.

In 2012, more than 50 farmer-cooperators assisted in conducting over 130 research trials. Projects on corn where field trials were conducted in 2012 include studies such as planting date comparisons, populations, fungicide application, foliar feeding, cover crops, and others. Soybean projects included planting date, sulfur application, seed treatments, land rolling and more. The book summarizing all of this data has just been recently published, and a few might be available to you. If you want a copy, contact your local ISU Extension Field Agronomist, and if he has copies left, I am certain he will be willing to share one with you. If you are an internet user, the most recent copy of the report can be found on the ISU Extension, Plymouth County web page, on the Crops sub-page. Or, go to this site: <http://www.extension.iastate.edu/plymouth/crops>, and click on the "2012 ISU Farmer Assisted Research and Management On Farm Results" link.

One of the interesting studies is a site in western Sioux County that has completed seven years of comparing tilled and no-tilled crops in replicated strips. It has been corn for four years, beans for three. The comparison is done on a well-drained western Iowa loess soil, and the strips have maintained the same tillage over the length of the trial (tilled are tilled every year, no-tilled are no-tilled each year.) 2012 was the last year of this study. Soybean yields at this site have averaged 59.6 bushels per acre over those three years (2007, 2009, and 2011) on the tilled plots, and 58.2 on the no-tilled plots. This year the field was in corn, and this was one of the driest areas in NW Iowa. Corn yields in 2012 on the tilled plots averaged 70.2 bushels per acre, while the no-tilled strips this year yielded 111.2 bushels per acre. With this large difference in yield in this dry year, the 4-year average for corn is 171.7 bu/acre for the tilled strips, and 177.1 for the no-tilled strips.

Speaking of no-till, I would just like to let you know that we will be holding a **NW Iowa No-Till Conference in Merville**, just east of Sioux City, **on Friday, March 15**, from 9:30 am to 2:30 pm. Keynote speakers include Paul Jasa from the University of Nebraska discussing managing high residue levels in no-till, Sarah Carlson from PFI discussing cover crops, and Barry Kusel, a long-time no-tiller from Manning. Two 3-member farmer panels will discuss either no-till and manure, or corn-on-corn no-till production. If you want to see a copy of the brochure, check out Plymouth County Extension's web page, or contact your local Extension office.

Drainage and Sub-Irrigation

*By Kris Kohl, ISU Extension & Outreach Ag Engineer
Program Specialists*

Drainage and Sub-irrigation workshop planned for March 20 from 9:30 to 4:00pm at the Buena Vista County Extension and Outreach Office located at 824 Flindt dr. Storm Lake. The cost to attend is only \$30 dollars with lunch included. Please call the Buena Vista County Extension and Outreach Office at 712-732-5056 to reserve your spot.

Tile drainage is an important part of land improvement and management. Much of the old tile that is out in the fields is starting to fail because of the large equipment and shallow depth. In dryer years like 2012 water can be pumped back into tile lines watering the crops from the bottom up. ISU Extension and Outreach Ag Engineer, Kris Kohl has been doing on farm research on this technique for 4 years with good success. The systems do require water use permits through the DNR and the design lays the tiles parallel to the slope at longer laterals that the standard up the draw locations found in the western part of northwest Iowa. Adding tile in dry years is much better than saturated soil because the equipment does not damage the soil hydraulic properties next to the tile.

Old tile maps of farms are often hard to come by. However there are many internet websites that have pictures of the fields that can often indicate where the existing tiles are. This workshop will provide a list of these free sites and will demonstrate how to determine where to probe on your farm.

The specific topics for the workshop are:

- 1) Determining the design of the drainage system(tile size, spacing and slope)
- 2) Current field research on sub irrigation design and performance
- 3) Water Quality improvements opportunities for tilled land
- 4) Find existing tile –knowing where to look without digging
- 5) Common tiling mistakes to avoid

*Published by: Dianne Dirks , ISU Extension and
Outreach Pocahontas County Office Manager*

EMMET COUNTY

Cattle and Environment Forum

*By Beth Doran, ISU Extension & Outreach Beef
Program Specialists*

Iowa State University Extension and Outreach and the O'Brien County Cattlemen's Association are co-sponsoring a "Cattle and Environment Forum" March 19 at the Community Center in Primghar. The purpose of the forum is to share ways small and medium-size cattle feeders can work with the Iowa Department of Natural Resources (IDNR) to comply with Iowa and federal environmental regulations. The meeting will begin at 7:00 p.m. with brief comments from representatives of the Area 3 IDNR Field Office and will be followed with open questions and answers. Questions may be posed from the floor or anonymously through appointed spokespersons. For more information, contact Dave Grooters, O'Brien County Cattlemen Director, at 712-348-1960, or Beth Doran, ISU Extension and Outreach Beef Program Specialist, at 712-737-4230.

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