

This is the Law



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(For the N. C. Bar Association)

"Attractive Nuisances"

A unique segment of the North Carolina common law bears the name "Attractive Nuisance Doctrine" and sometimes operates to charge property owners with strict liability if small children are killed or hurt on their property.

Young children are known to be strongly attracted by ponds of water, by trains and the like. The "Attractive Nuisance Doctrine" comes into operation when a property owner maintains a condition or object which is reasonably calculated to attract or lure small children upon his property and which involves unusual danger to small children. In the 30-odd cases which have arisen in North Carolina on this subject, our Supreme Court has thus far limited strict liability to four types of "attractive nuisances." They are:

1. Artificial ponds of water;
2. Charged electric wires;
3. Railroad turntables, and (oddy enough),
4. Dynamite caps.

Strictly Accountable

Very gently stated, the attractive nuisance doctrine, as applied in North Carolina, says that if a child (under 12) is killed or hurt by one of these "attractive" things, the owner—under certain circumstances—will be held strictly accountable for the harm done.

These circumstances, all of which must exist before the property owner can be held liable for accidents involving children, are:

1. The owner must have been able to "foresee" that his property would attract children. (This requirement could be satisfied by the fact that in the past children had been accustomed to come on or play about his property because of the "attractive nuisance".)
2. The nature or condition of the property must create an "unreasonable" risk of death or bodily harm to an unwitting child. (It must have a hidden danger which probably is not obvious to a child under 12.)
3. The child, because of his youth, does not appreciate the danger.
4. The usefulness of the "attractive nuisance" to the owner must be outweighed by the possibility that young children might get hurt.

Where the injured child is more than 12 years old, it is normally a question for the jury as to whether his own "negligence" should prevent a recovery.

To illustrate the application of these rules, let's look at two actual North Carolina court cases.

In the first, a little boy, not quite three years old, left home with his mother's permission, and in the com-

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pany of other children, for a nearby playground. The town railroad station was across the street from the playground. Near the station was a small artificial pool of water. The youngster told the other kids he was going home and left in that direction. His drowned body was later found in the pool. The court denied recovery in a suit against the railroad for the boy's death, saying ". . . the evidence does not make it appear that this unfortunate occurrence was one which reasonably should have been anticipated and guarded against by the defendant."

In a similar case, a certain textile mill maintained an artificial pool near its buildings. Children frequently fish-

ed in it and chased tadpoles there. A child was accidentally drowned. At the trial, evidence was that the mill foreman on two on three occasions had tried to chase the kids away, but, the mill had not erected a fence or taken other precautionary steps at the pool. Our supreme Court, upholding a verdict against the mill for the child's death, said:

"A person has the right to maintain an enclosed pond or pool on his premises. It is not an act of negligence to do so.

"When, however, he exercises this right and children of tender years are attracted thereto and it becomes a common resort of persons of tender years to which they go to play, and it appears that the owner knows or by the exercise of ordinary care should know that it is being so used, then it becomes his duty to exercise ordinary care to provide reasonably adequate protection against injury. Failure so to do constitutes an act of negligence."

So, in this second case, our court apparently felt that the mill owner should either have built a fence around the pond, or, else provided some other adequate means of keeping the youngsters away from the danger.

Cross-ties Not "Attractive"

In still another case, a railroad piled up some used cross-ties near its tracks. Children had been seen playing on and near this pile. A six-year-old was hurt by a falling tie. The railroad was held NOT liable, the court saying that the timbers were not so dangerous nor so attractive in themselves as to place strict liability on the railroad. It was said that a curious, normal boy could make a plaything out of just about anything, and, for this reason, the court must narrowly limit those instances in which a property owner would be held liable

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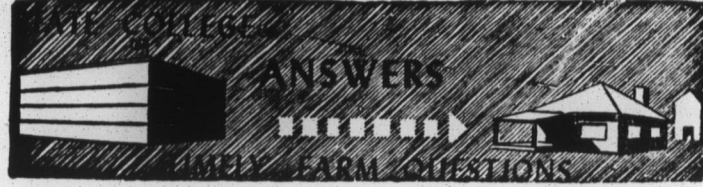
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Question: How can I get the most benefit out of a few inches of rain?
Answer: There are a number of farming practices that help hold water and make it soak in the soil. Some of these practices are: contour cultivation, terracing, planting cover crops of green manure crops, chiseling or basin cultivation, and stubble mulching.

Question: Does the use of lights in laying houses lower the hatchability of eggs?
Answer: No. Contrary to popular belief, the use of lights does not lower hatchability or the strength of the chicks.

Question: Should I irrigate after harvest?
Answer: Experts say yes; that irrigating after harvest fills the soil reservoir for crops next season, starts your crop growing earlier, produces larger yield, helps winter cover, greatly improves the soil, uses fall labor, and may reduce the size of irrigation system you need all year.

Question: How much beef can I expect to raise per acre of land?
Answer: State College specialists say that 250 to 330 pounds of beef can be produced per acre of good pasture where steers are grazed.

Question: What causes deformed calves?
Answer: Studies show that most around 72 days.

deformed calves are caused by poor nutrition in the mother between the third and sixth month of gestation. Deformed calves can be expected wherever cows have been confined on poor feed or spent a long time on dry feed.

Question: Does too close grazing of grass during the growing season influence the stand?
Answer: Yes. Clipping one-half or more foliage during the growing season causes grass roots to stop growing for a time after each clipping. Removing 40 per cent or less doesn't slow the root growth, however.

Question: How much help can I get in establishing a cover crop?
Answer: Under provision of the 1955 Agricultural Conservation Program, cost sharing is provided on seed, lime, and commercial fertilizers where they are necessary, as well as the cost of preparing the seedbed.

Question: How long should it take to get my broilers ready for market?
Answer: If you take advantage of all the advances in breeding, nutrition, and disease control, your broilers should be ready for the market in 72 days.

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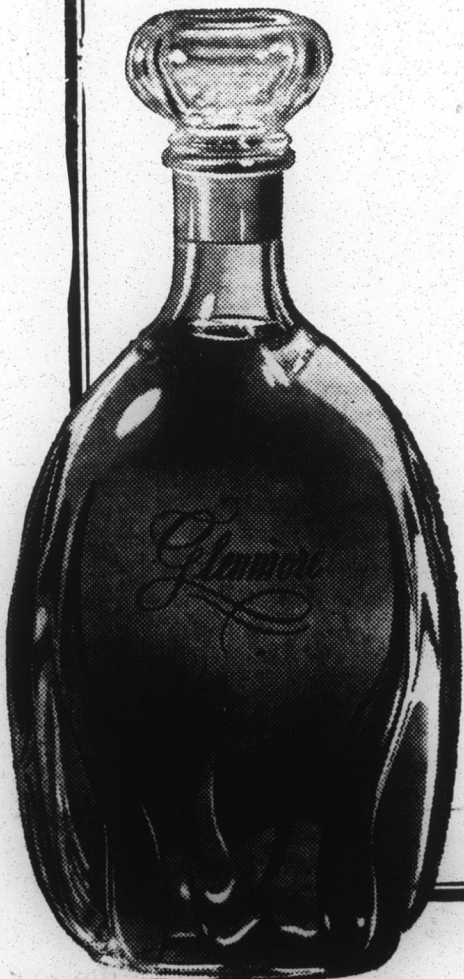
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