

**Heat Treatment Workshop**  
**Heat Treatment Liability Issues**



**May 15, 2004**

**by**

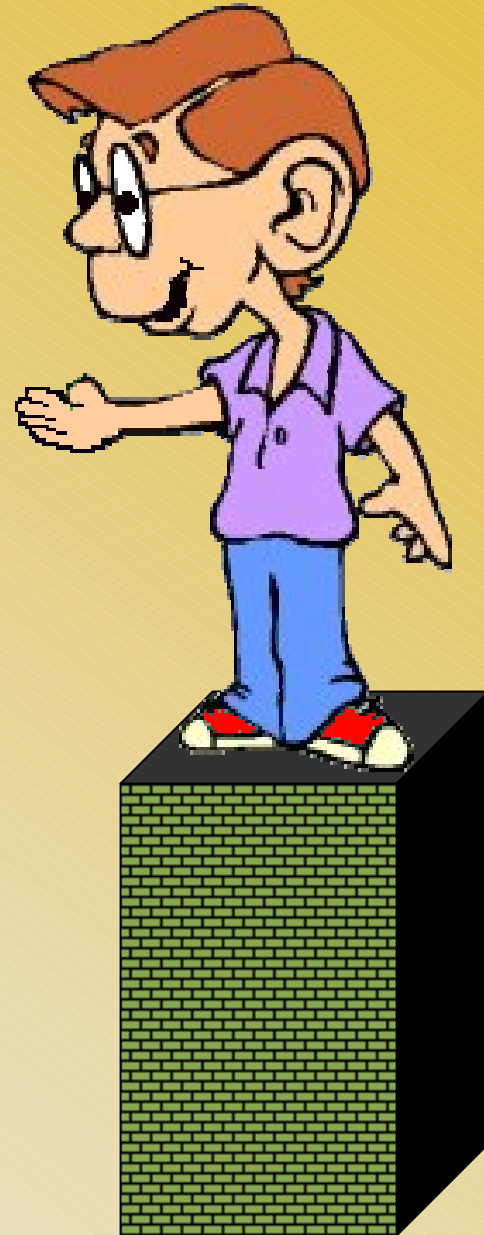
**Michael T. Olexa**

**Food and Resource Economics Department**



**UNIVERSITY OF  
FLORIDA**

**This is a Teaching  
Lecture Based on  
Hypotheticals and  
Actual Case Law  
and is Not an  
Offering of Legal  
Advice or Opinion.**

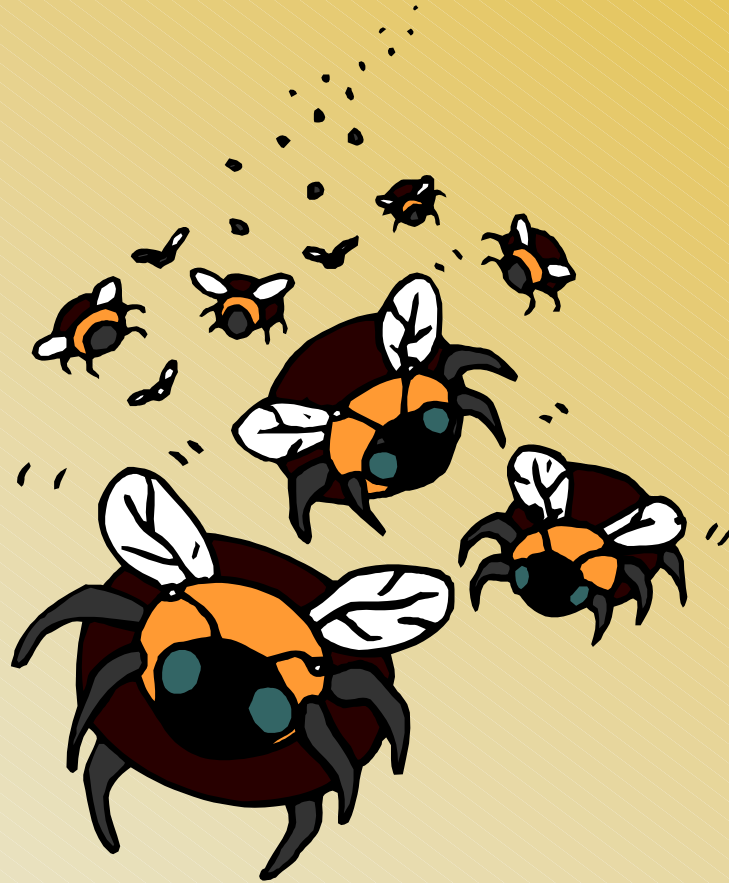


## The Playing Field

- Increase in Lawsuits
- Increase in Regulations

# Increase in Lawsuits







**Jackpot Justice!**

# Disclaimers

On bread pudding:

- **“Product will be hot after heating”.**



On a peanut bag:

- **“This product contains nuts”.**

On christmas lights:

- **“Warning: For indoor and outdoor use only”.**

On floodlight:

- **“This floodlight is capable of illuminating large areas, even in the dark”.**

On a chainsaw:

- **“Do not attempt to stop chain with your hands or genitals”.**

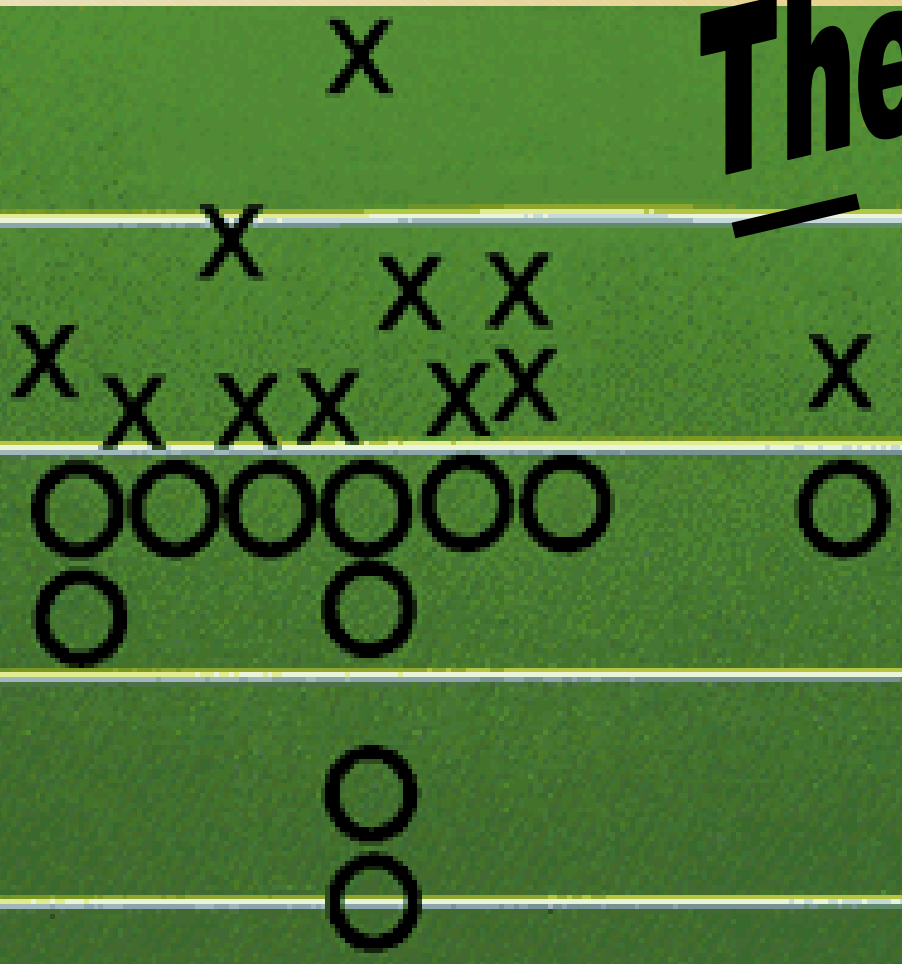
# Increase in Regulations

**Administrative Agencies**

- **Pythagorean theorem:**  
✓24 words
- **The Ten Commandments:**  
✓179 words
- **The Gettysburg Address:**  
✓286 words
- **The Declaration of Independence:**  
✓1,300 words

- **U.S. Government regulations  
on the sale of cabbage:  
✓26,911 words**

# The Game Plan



- Risk Management
- Liability Awareness



## Outline:

### I. **Risk Management**

- **A**ssessment

- **C**ommunication

- **T**ake Action

Outline:

## II. Risk Management

- **Case Study One:**

**Workplace Fatality**

- **Case Study Two:**

**Vicarious Liability**

# Risk Management

**Assessment**

**Communication**

**Take Action**

# I. Risk Management

## A. Assessment

- Hazard Identification

- Established by law and experience

*Example:*

- ◆ Law-Pesticide label

- ◆ Experience-Safe application

- **Hazard Characterization**

- **Consider potential hazards in different situations**

*Example:*

- ◆ **Fumigation versus Heat Treatment**

## **B. Communication**

- **Important during risk assessment and taking action phase.**
- ❖ **Make sure there's a meeting of the minds.**

## C. **T**ake Action

- **Objective: Reduce risk to the lowest practical or achievable level.**

*Example:*

- ◆ **Once risk is identified, follow through with recommended procedures to handle the risk.**
- ◆ **If recommended alternatives exist, select the best alternative.**
- ◆ **Implement, and**
- ◆ **Keep informed, evaluate, and review.**

**A  
C  
T**



# Risk Management

**Structured**

**Common**

**Sense**

# Case Studies

# Liability Exposure

- **Cost of doing business.**

## **Most Activities**

- **Carry inherent liability risks.**

# Legal Basics

## Negligence

# Negligence

- **Omitting to do something that a reasonable person would do under “like circumstances” or the doing of something which a reasonable person would not do.**
  - ◆ **Point: Foreseeability**

# Negligence

- **Elements of:**
  - ◆ **Duty**
  - ◆ **Breach of duty**
  - ◆ **Causation**
  - ◆ **Damages or injury**

## **Case Study One - Workplace Fatality**

### Summary of Facts:

Plaintiff, a 52 year old male, was working in a bakery department near heated ovens where the temperature was excessively hot and the weather was also very warm. Plaintiff baker was told to work faster. While working, he was overcome by heat and died the next day.

Lower court ruled in favor of employer and insurer.  
Surviving spouse appealed.



**Case Study One - Workplace Fatality**

Results:

**Appeals court reversed...**



## Case Study One - **Workplace Fatality**

### Negligence:

#### ● **Duty**

- ❖ **Provide a safe workplace for employees.**
- ❖ **Exercise ordinary and reasonable care.**
  - ✓ **Care exercised by prudent employers in similar circumstances.**
- ❖ **Inform employees of dangers & protect them from these dangers.**

## Case Study One - **Workplace Fatality**

Duty, *continues*

- **Employer's duty extends to:**
  - ❖ **Areas where the employees work;**
  - ❖ **Areas where employees are expressly or impliedly invited or permitted to work;**
  - ❖ **Areas where employer knows or should have known the employees are accustomed to using.**

## **Case Study One - Workplace Fatality**

### **● Breach**

- ❖ If employer fails to meet the duty of reasonable care in providing a safe workplace he or she will be liable to employee.**

## **Case Study One - Workplace Fatality**

### **● Cause**

- ❖ Typically, employer would be liable for employee's injuries caused by exposure to heat if employment subjects employee to a risk greater than to which general public is exposed.**

### **● Damages or injury**

- ❖ Employee's death**

# Importance of Risk Management

# Legal Basics

## *Vicarious Liability*

## Vicarious Liability:

### *Defined*

- **Employer is held liable to a third party for the civil wrong of the employee for no other reason than the fact that there exists a job relationship between the employer and employee and that the employee was acting within the scope of that relationship when he committed the civil wrong.**



## Vicarious Liability:

- **Employer may be sued for damages or injuries caused by the employee to a third party even though the employer was totally innocent of personal fault in the third party's injuries.**

Justification:

- **Employer has some control over the employee's conduct.**
- **Employer started the activity from which the civil wrong happened.**
- **Employer selected the employee.**
- **Vicarious liability comes with the privilege of employing someone.**
- **\$ Employer likely to have more money than employee.**



## Case Study Two - **Vicarious Liability**

### Summary of Facts:

- **Defendant employer was hired to heat treat a cafeteria. Defendant's employee forgot to remove heat sensitive products such as sugar, powdered shortening, soda, etc. As a result, monetary damages were sustained by the cafeteria. Cafeteria sues alleging negligence on the part of the defendant.**

## Case Study Two - **Vicarious Liability**

### Results:

- **Defendant employer is liable because of negligent act of the employee.**

# Case Study Three - Employer/Employee

Employer



Employee



Third Party

# Conclusion



I'll tell you what this means, Norm-- no size restrictions and screw the limit.