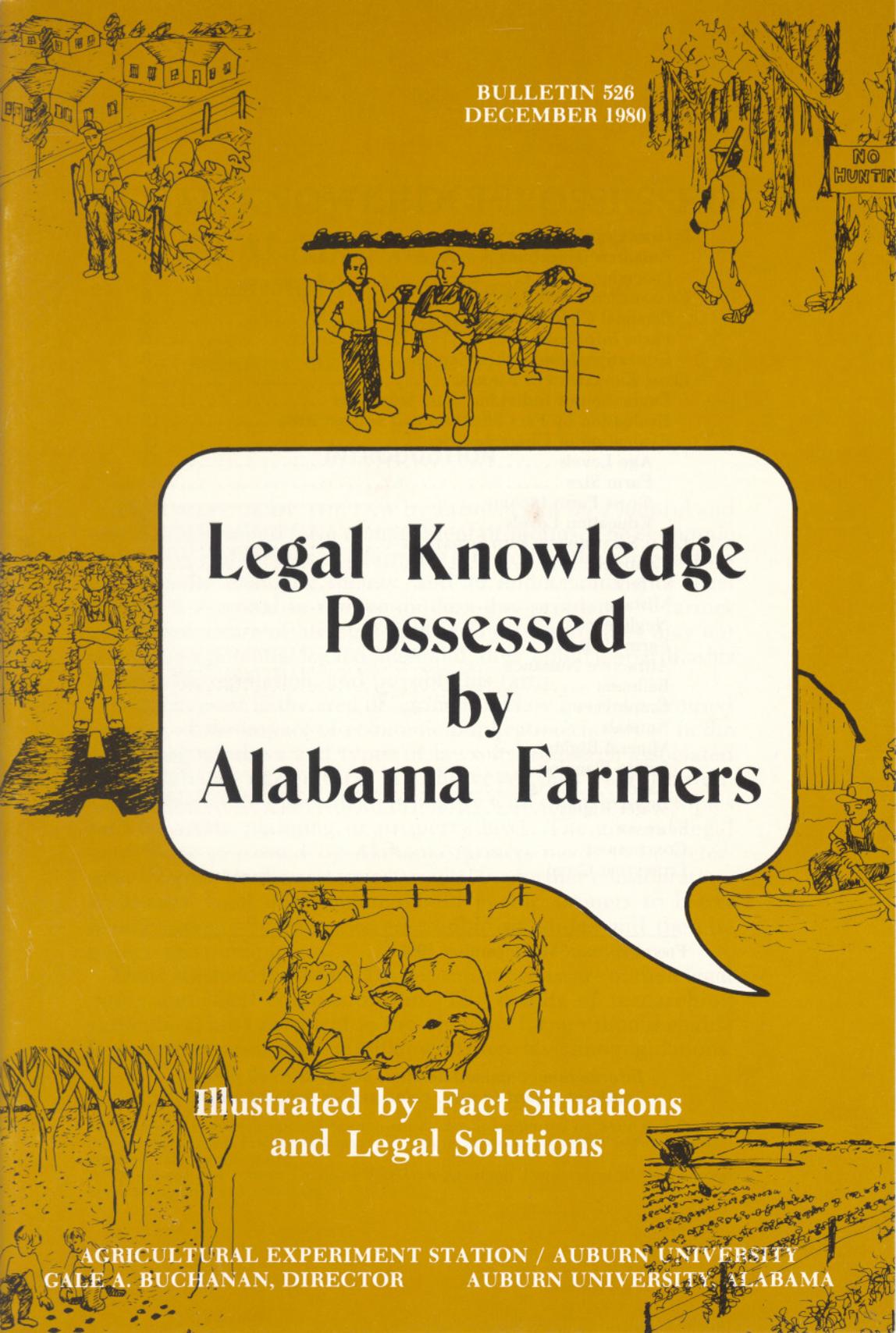


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Legal Knowledge Possessed by Alabama Farmers

Illustrated by Fact Situations
and Legal Solutions

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*Information contained herein is available to all persons
without regard to race, color, sex, or national origin.*

LEGAL KNOWLEDGE POSSESSED BY ALABAMA FARMERS*

Illustrated by Fact Situations and Legal Solutions

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INTRODUCTION

KNOWLEDGE OF THE LAW by farmers can be a helpful and useful tool in sound farm management programs. The economic well-being and success of a farm are affected by the complexities of a rapidly changing society, and an understanding of legal matters is essential to resolve modern-day problems. A farmer who is not aware of his legal rights and responsibilities may not recognize a potential legal danger and, thus, could jeopardize his savings, his reputation, and possibly his farm.

Legal interest in the area of agricultural law has been aroused because of the impact of economic implications involved in the increasing numbers and types of lawsuits. Research associated with Alabama agricultural law, however, has been limited. Completed studies have dealt primarily with specific legal topics such as estate planning or property laws. The general legal knowledge possessed by Alabama farmers needs to be determined to decide the areas most crucial for further consideration. Additional legal information should enable farmers to better handle frequently encountered trouble situations and thereby reduce economic losses.

There is a need for farmers to become more aware of their legal rights and legal responsibilities. The results of researching agricultural laws pertinent to the Alabama farmer should enable farmers to become more familiar with these laws and regulations,

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thus giving them the ability to detect potential legal dangers. The findings will also provide legal knowledge in layman terms which should enable a farmer to decide if legal counsel is necessary.

Law is a complex and difficult field of study in which a person becomes more competent through years of legal training and experience. A legal decision fitting one situation may be interpreted differently when applied to another. To expect that legal rules be written precisely to apply to every occurrence which the inventive mind of man may bring into existence is to ask the impossible (56). For this reason, professional legal assistance should be sought if some type of legal action is considered. The services of lawyers are available to farmers and should be used when making a decision on what type of legal action to take. Results of this project are intended to be strictly for informational purposes, as the primary purpose is to acquaint Alabama farmers with some of their basic legal rights. This study is not intended as a substitute for legal counsel.

Research Objectives

The primary objective of this study was to determine the extent of knowledge Alabama farmers have of various legal situations. The specific objectives were as follows:

- (1) to research and delineate Alabama laws likely to be applicable to Alabama farmers; and,
- (2) to present the findings from research of Alabama laws in layman terms.

Procedures

This study was conducted as part of a larger research project entitled "Law for the Alabama Farmer." The basic objectives of the project were: (1) to review statutory and case laws applicable to Alabama farmers and to determine the extent of their knowledge in this area, and (2) to develop case studies to illustrate some of the more common legal involvements of a farm operation and to describe and measure some of the economic consequences. This study applies to the first objective in which state statutes and judicial cases were researched and analyzed to determine the aspects of the law most likely to be applicable to Alabama farmers.

Since all of Alabama's statutory laws are compiled in the Code of Alabama, the greatest portion of the research was dependent on this reference source. The Code is a collection of volumes containing all laws passed by the Alabama Legislature through 1975, when it was last recompiled. Supplements referring to subsequent changes were checked to disclose the newer or supplemental laws. The Code of Alabama also gives a brief explanation of any relevant court decision pertaining to a particular law. These court cases were then researched to determine which ones could be applied to the legal area in question. Thus, the court cases most directly related to the selected topics were included in the study.

The statutory and case laws studied were used to prepare a questionnaire for survey purposes. The questionnaire contained a general data section and 50 fact situations composed in question form. Information was collected in the data section about the general characteristics of the persons interviewed, such as age, marital status, type and size of farming operation, educational background, and legal experience. The 50 questions covered a broad range of topics and were divided into 13 subject areas for analysis. The subject area groups included the following: contracts, offers, mistakes, negligence, farm visitors, attractive nuisance, bailment, employees, animals, mineral rights, estate planning, land, and water rights. The majority of the answers to the fact situations were of "yes" or "no" nature and the questions asked for an explanation of the answer choice. The remainder of the fact situations required a one- or two-word response as well as an explanation.

The questionnaire surveyed Alabama farmers to determine the knowledge they had of their legal rights and responsibilities. After pretesting the questionnaire and making minor revisions, 202 farmers were personally contacted and interviewed. To participate in the study, each farmer had to be farming full-time with a gross farm income of \$2,500 or more.

The sample of Alabama farmers taking part in the study was drawn from five primarily agricultural areas in Alabama. These areas were: (1) Wiregrass, (2) Gulf Coast, (3) Black Belt, (4) Sand Mountain, and (5) Tennessee Valley. In 1974, these five areas had 16,088 farms with gross sales of \$2,500 or more compared with an Alabama total of 29,269 farms (75). The number of farmers selected in each area was determined by the percentage of farms in that area using 1974 statistical data. Sampling counties were

then randomly selected to achieve the required number per area (see figure). After each county was divided into approximately equal areas, based on the number of farms, survey areas were randomly picked and five farmers were interviewed per area, whenever possible, to acquire the necessary total for each county. Alternate areas were chosen in the same manner and were used whenever the required number of farmers was unavailable in the original designated area.

CHARACTERISTICS OF FARMERS

General characteristics of the surveyed farmers were obtained by using the data information section of the questionnaire. The information, when assembled, represented an overall picture of the personal background and present status of the farmers interviewed as a whole as well as general data about the farm.

Personal Characteristics

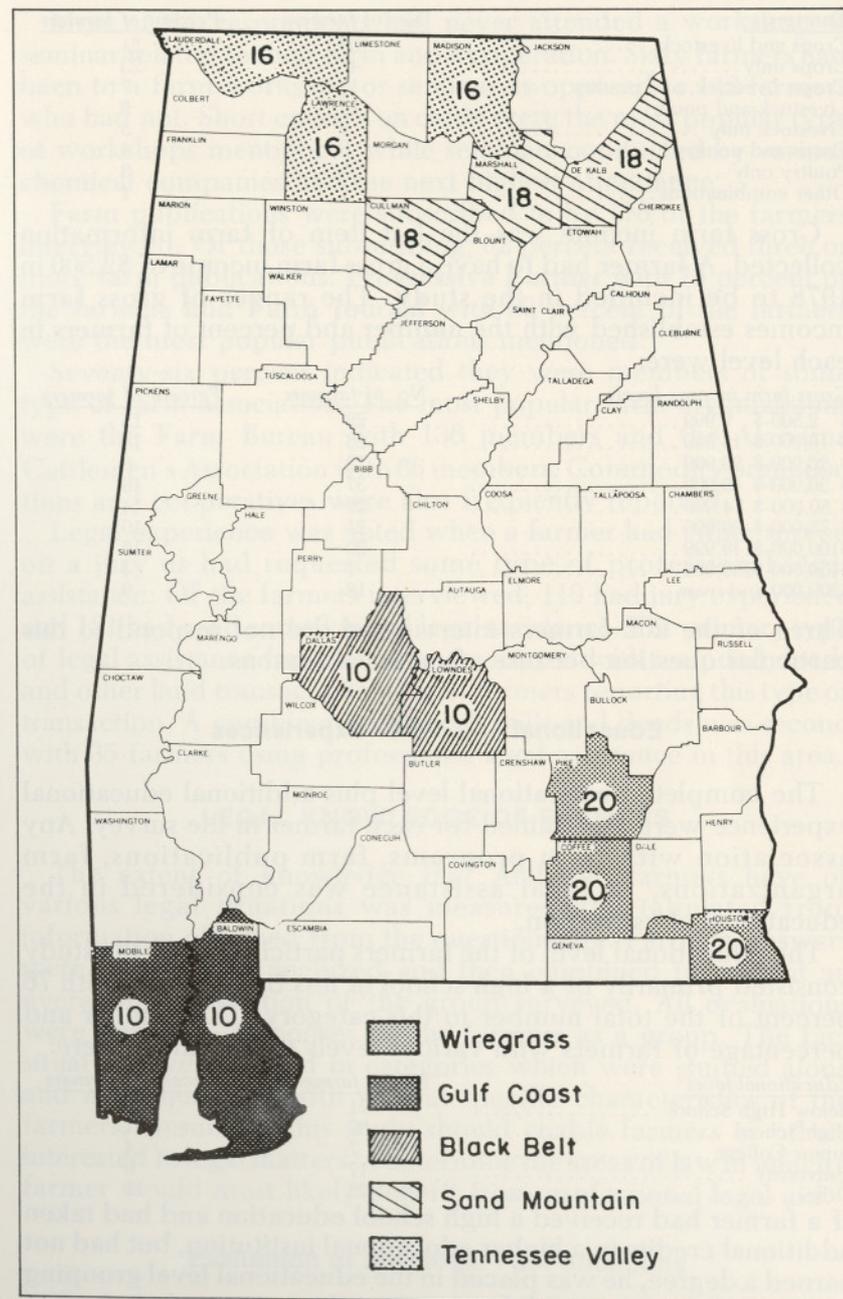
The personal characteristics dealt with the farmer's age and his family background. The average age of respondents was 50 years, ranging from 21 to 81 years. The number of years a farmer had lived in Alabama ranged from 7 to 81 years, with 50 percent in the range of 41 to 60 years.

The marital status and number of children in the family were categorized to present the family background of the farmer. Ninety-one percent of all respondents were married.

Farm Information

There was a wide variation in the number of acres operated. The smallest farm size consisted of 2 acres and the largest was 8,500 acres, with an average farm size of 715 acres. Farmers were divided into three approximately equal groups (small, medium, large) for the purpose of evaluation. The small-size farms ranged from 2 to 223 acres, the medium-size farms ranged from 224 to 668, and the large-size farms ranged from 689 to 8,500 acres. Farm ownership and enterprise combinations were as follows:

<i>Ownership</i>	<i>No. of farmers</i>	<i>Percent of farmers</i>
Owned all	63	31
Rented all	14	7
Owned and rented	125	62



Selected areas, sampling counties, and number of farmers per county, Alabama, 1979.

<i>Enterprise</i>	<i>No. of farmers</i>	<i>Percent of farmers</i>
Crops and livestock.....	103	51
Crops only.....	47	23
Crops, livestock, and poultry.....	15	7
Livestock and poultry.....	13	6
Livestock only.....	9	5
Crops and poultry.....	8	4
Poultry only.....	5	3
Other combinations.....	2	1

Gross farm income was the last item of farm information collected. A farmer had to have a gross farm income of \$2,500 in 1978 to be included in the study. The ranges of gross farm incomes established with the number and percent of farmers in each level were:

<i>Gross farm income levels</i>	<i>No. of farmers</i>	<i>Percent of farmers</i>
\$ 2,500-\$ 9,999.....	29	15
\$ 10,000-\$ 19,999.....	26	13
\$ 20,000-\$ 29,999.....	12	6
\$ 30,000-\$ 49,999.....	37	19
\$ 50,000-\$ 74,999.....	29	14
\$ 75,000-\$ 99,999.....	21	10
\$100,000-\$149,999.....	20	10
\$150,000-\$199,999.....	7	4
\$200,000-and over.....	18	9

Three of the 202 farmers interviewed did not respond to this particular question because of personal reasons.

Educational and Other Experiences

The completed educational level plus additional educational experience were ascertained for each farmer in the survey. Any association with farm programs, farm publications, farm organizations, or legal assistance was considered in the educational classification.

The educational level of the farmers participating in the study consisted primarily of a high school or less background with 76 percent of the total number in this category. The number and percentage of farmers with various levels of education were:

<i>Educational level</i>	<i>No. of farmers</i>	<i>Percent of farmers</i>
Below High School.....	71	35
High School.....	82	41
Junior College.....	7	4
University.....	17	9
Other.....	22	11

If a farmer had received a high school education and had taken additional credits in a higher educational institution, but had not earned a degree, he was placed in the educational level grouping "Other." Three farmers did not answer this question for personal reasons.

Most of the respondents had never attended a workshop or seminar related to their farm and its operation. Sixty farmers had been to a farm workshop or seminar as opposed to 142 farmers who had not. Short courses on cattle were the most popular type of workshops mentioned, while seminars conducted by various chemical companies had the next highest attendance.

Farm publications were subscribed to by 176 of the farmers interviewed. Of those subscribing, 62 percent received three or more farm publications. **Progressive Farmer** with 78 percent of the farmers and **Farm Journal** with 60 percent of the farmers were the most popular publications mentioned.

Seventy-six percent indicated they were members of some type of farm association. The most popular farm organizations were the Farm Bureau with 136 members and the Alabama Cattlemen's Association with 66 members. Commodity organizations and cooperatives were also frequently reported.

Legal experience was noted when a farmer had either served on a jury or had requested some type of professional legal assistance. Of the farmers interviewed, 119 had jury experience and 121 had used some kind of legal assistance. The primary type of legal assistance farmers were associated with included deeds and other land transactions with 44 farmers reporting this type of transaction. A combination of both wills and deeds was second with 35 farmers using professional legal assistance in this area.

LEGAL KNOWLEDGE OF FARMERS

The extent of knowledge that Alabama farmers have of various legal situations was measured and tabulated from information obtained from the questionnaire. Farmers' answers were individually analyzed and then combined to present an overall representation of the group surveyed. All evaluations were based on responses by the farmers as a group. The fact situations were placed in categories which were studied alone and in conjunction with several specific characteristics of the farmers. Results of this study should enable farmers or others interested in legal matters to determine the areas of law in which a farmer would most likely benefit from professional legal aid.

Evaluation of Individual Fact Situations

Each farmer was asked 50 fact situation-type questions regarding diverse subjects. Most of the fact situations were set up

in question form requiring a yes or no response. Six of the fact situations were constructed in such a way that a one- or two-word response was required because a yes or no answer was infeasible. In addition to the answer, every farmer was asked for a reason explaining his reply for each of the 50 situations. All answers and reasons were checked in accordance with Alabama statutory and case laws to determine a right or wrong response. Responses were then placed in one of the following four groups: (1) right answer with the right reason, (2) right answer with the wrong reason, (3) wrong answer with the right reason, or (4) wrong answer with the wrong reason. If a farmer had no knowledge of a particular legal situation and could not give a reply, then a fifth group, "don't know," was used.

All 202 responses were tabulated collectively for each individual fact situation and percentages were calculated for the five response groups, table 1. A large variation was observed for all groups except for group three (wrong answer with right reason) and group five (don't know). Group three had percentages that were low or nonexistent for fact situations in which the farmers had given the "wrong answer with the right reason." Most of the low percentages were caused by a misunderstanding of the questions. The "don't know" responses of group five also received low percentages because the majority of the farmers attempted to answer the question rather than responding with "don't know." The percentage of farmers giving the "right answer with the right reason" was 50 percent or higher for 26 of the fact situations. For the "wrong answer with the wrong reason," 50 percent or more of the farmers gave this response for 13 fact situations.

Evaluation by Fact Situation and Subject Area

All of the questions were divided into fact situation groups and each was assigned a subject name describing the fact situations. There were 13 subject area groups which covered a wide range of legal topics. Offers and mistakes are normally treated as a subsection of contracts, but because of the importance of these two concepts they were treated separately in this study.

The percentage of farmers giving the correct response for each fact situation and subject area is indicated in table 2. The numerical figures in each fact situation represent the question

TABLE 1. PERCENTAGE OF FARMERS GIVING RIGHT OR WRONG ANSWERS AND REASONS TO INDIVIDUAL FACT SITUATION, 202 FULL-TIME FARMERS, ALABAMA, 1979

Fact situation	Type of answers and reasons					Don't know
	Right answer right reason	Right answer wrong reason	Wrong answer right reason	Wrong answer wrong reason		
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
1	50	3	1	43	3	
2	93	2	0	3	2	
3	46	12	1	38	3	
4	57	31	0	6	6	
5	91	1	0	5	3	
6	40	3	2	53	2	
7	84	5	0	10	1	
8	66	12	0	19	3	
9	28	59	0	4	9	
10	10	30	0	56	4	
11	31	43	0	17	9	
12	11	9	0	77	3	
13	52	5	6	31	6	
14	85	1	0	11	3	
15	56	4	1	35	4	
16	53	4	0	39	4	
17	47	27	0	23	3	
18	84	5	2	7	2	
19	29	3	0	63	5	
20	59	1	1	36	3	
21	33	33	0	26	8	
22	81	2	0	14	3	
23	57	10	0	25	8	
24	14	1	1	77	7	
25	85	9	0	3	3	
26	35	23	1	31	10	
27	51	1	1	43	4	
28	37	3	1	43	16	
29	36	2	2	53	7	
30	22	10	1	61	6	
31	43	1	1	51	4	
32	93	1	0	3	3	
33	45	33	6	9	7	
34	12	10	0	71	7	
35	27	7	0	59	7	
36	62	1	0	31	6	
37	71	12	0	11	6	
38	51	10	0	30	9	
39	83	4	0	6	7	
40	21	3	0	71	5	
41	42	20	0	25	13	
42	21	19	11	35	14	
43	55	16	1	20	8	
44	32	5	0	56	7	
45	65	2	1	21	11	
46	37	16	0	41	6	
47	95	1	1	2	1	
48	31	4	1	56	8	
49	60	26	0	5	9	
50	50	5	2	36	7	

TABLE 2. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH THE RIGHT REASON BY FACT SITUATION AND SUBJECT AREA, 202 FULL-TIME FARMERS, ALABAMA, 1979

Fact situations	Subject areas	Percent
1-9	Contracts	62
10-12	Offers	17
13	Mistake	52
14-15	Negligence	71
16-22	Farm visitors	55
23	Attractive nuisance	57
24-25	Bailment	50
26-30	Employees	36
31-38	Animals	50
39	Mineral rights	83
40-45	Estate planning	39
46-48	Land	54
49-50	Water rights	55

number for each particular question. The correct response of the "right answer with the right reason" was the response group chosen and evaluated to provide the best representation of the degree of legal knowledge. From the results, farmers were the most knowledgeable about the subject dealing with mineral rights with a high of 83 percent correct responses. The subject area of negligence had the next highest percent correct with 71 percent. The subject area of offers received the lowest percentage figure, 17 percent. Farmers had a low percent of correct responses in two other subjects, employees and estate planning, which indicated limited legal knowledge in these areas.

Evaluation of Characteristics

Four characteristics, farmer's age, farm size, gross farm income, and educational level of the farmers, were selected to determine if any relationship to the responses given per subject area or among the different levels of the characteristics themselves existed. All characteristics were analyzed by associating the correct response of the "right answer with the right reason" for each of the 13 subject area groups.

Age Levels

Farmers were divided into three age level groups with an approximately equal number of farmers in each group. Correct responses for each age level were calculated for all 13 subject areas, table 3. The response results did not differ greatly when comparing subject areas to each particular age level. In addition,

TABLE 3. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND AGE LEVELS, AND NUMBER OF FARMERS BY AGE LEVELS, 202 FULL-TIME FARMERS, ALABAMA, 1979

Subject areas	Age levels ¹		
	21 - 44 years	45 - 57 years	58 - 81 years
	<i>Pct.</i>	<i>Pct.</i>	<i>Pct.</i>
Contracts	62	63	60
Offers	14	18	20
Mistake	54	50	51
Negligence	73	67	72
Farm visitors	53	57	55
Attractive nuisance	52	57	63
Bailment	52	48	48
Employees	38	36	35
Animals	53	50	48
Mineral rights	85	87	76
Estate planning	38	40	40
Land	50	55	58
Water rights	54	56	54
Average of correct responses ²	50	51	50
Number of farmers	67	68	67

¹Age levels were determined to give three approximately equal farmer groups.

²Weighted average of fact situations.

the figures obtained for an individual age level for all of the subject areas were relatively close to the percentages computed for farmers as a whole, table 2. Differences in percentages were not significant between the age levels and the average of correct responses.

Farm Size

Farm size was the number of acres owned or operated encompassing the total farm operation. Three classifications of farm size — small, medium, and large — were established to place farmers in three approximately equal groups.

The percentage of correct responses by farm size in relation to all 13 subject areas was determined, table 4. No wide variation was noticed in the results when comparing responses by farm size in all subject areas. However, there was an indication that as the size of farms increased, there was a slight increase in the average of correct responses. Similar to age level, the correct responses by farm size for all subject areas ran close to the farmers' percentage as a whole, table 2.

TABLE 4. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND FARM SIZE, AND NUMBER OF FARMERS BY FARM SIZE, 202 FULL-TIME FARMERS, ALABAMA, 1979

Subject areas	Size of farm in acres		
	Small (2 - 223)	Medium (224 - 688)	Large (689 - 8500)
	Pct.	Pct.	Pct.
Contracts	60	61	64
Offers	23	14	16
Mistake	52	46	58
Negligence	72	71	68
Farm visitors	54	58	53
Attractive nuisance	57	56	60
Bailment	48	52	48
Employees	32	35	41
Animals	49	49	53
Mineral rights	73	88	87
Estate planning	36	40	42
Land	51	57	55
Water rights	47	60	58
Average of correct responses ¹	48	51	52
Number of farmers	67	68	67

¹Weighted average of fact situations.

Gross Farm Income

Gross farm incomes were arranged into nine levels and ranked from lowest to highest income. Farmers were asked to give their approximate gross farm incomes so they could be placed in the proper level. Three farmers did not answer this particular portion of the questionnaire, stating personal objections to the question.

The correct responses related to subject areas and gross farm income levels are shown in table 5. More diversity was evident among the income levels and corresponding categories than was found in the two characteristics discussed previously. In subject area mistake, the range of correct responses was from 25 percent for income level \$20,000-\$29,999, to 100 percent for income level \$150,000-\$199,999. The same gross farm income level (\$150,000-\$199,999) tallied another perfect response total in the subject area of mineral rights. Only 4 percent of the respondents were in the \$150,000-\$199,999 gross farm income level, which was the smallest representation. Gross farm income level of \$30,000-\$49,999 with 37 responses represented the largest number of farmers, which was 30 farm operators more than the \$150,000-\$199,999 level. There was a general trend of increasing averages of correct responses with increasing gross farm income levels

TABLE 5. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND GROSS FARM INCOME LEVELS, AND NUMBERS OF FARMERS BY GROSS FARM INCOME LEVELS, 202 FULL-TIME FARMERS, ALABAMA, 1979

Subject areas	Gross farm income levels								
	\$9,999 and under	\$10,000-19,999	\$20,000-29,999	\$30,000-39,999	\$50,000-74,999	\$75,000-99,999	\$100,000-149,999	\$150,000-199,999	\$200,000 and over
Contracts	Pct. 60	Pct. 59	Pct. 56	Pct. 62	Pct. 61	Pct. 60	Pct. 64	Pct. 62	Pct. 70
Offers	24	22	11	14	13	19	22	19	15
Mistake	41	73	25	51	59	38	50	100	44
Negligence	78	69	62	74	71	57	72	64	75
Farm visitors	53	57	57	58	55	48	70	71	67
Attractive nuisance	62	54	33	60	55	48	70	71	67
Bailment	41	52	42	50	59	52	42	64	47
Employees	28	37	25	35	37	38	36	54	44
Animals	50	49	45	52	48	52	58	52	58
Mineral rights	69	69	92	86	86	86	90	100	83
Estate planning	31	35	36	43	40	48	38	48	40
Land	51	58	47	50	60	57	55	52	56
Water rights	40	48	50	58	66	60	50	57	67
Average of correct responses ¹	47	50	45	51	51	51	52	54	55
Number of farmers ²	29	26	12	37	29	21	20	7	18

¹Weighted average of fact situations.

²Three farmers did not respond.

except for one income level, \$20,000-\$29,999, with 45 percent correct responses, which was the lowest average recorded.

Education Levels

Five educational levels were set up which summarized the formal education that farmers had received. Because of individual preference, three farmers did not give information about their educational background.

The correct response results for each subject area are shown in table 6. Moderate variation was obvious in some subject areas; however, for the most part, there were no major fluctuations in the percentages calculated. University educated farmers had the highest average of correct responses while those not completing high school had the lowest average. The other three educational levels had averages falling between the university and below high school levels. Farmers with a university degree ranked higher in all except three subject areas — negligence, farm visitors, land — than farmers as a whole, table 2. Farmers with an educational level below high school had lower percentages when compared to farmers as a whole in 9 out of the 13 subject areas.

TABLE 6. PERCENTAGE OF FARMERS GIVING RIGHT ANSWER WITH RIGHT REASON BY SUBJECT AREAS AND EDUCATIONAL LEVELS, AND NUMBER OF FARMERS BY EDUCATIONAL LEVELS, 202 FULL-TIME FARMERS, ALABAMA, 1979

Subject areas	Educational levels				
	Below high school	High school	Jr. college	University	Other ¹
Contracts	Pct. 59	Pct. 62	Pct. 65	Pct. 63	Pct. 64
Offers	19	15	19	20	17
Mistake	44	52	43	59	59
Negligence	72	73	64	56	70
Farm visitors	56	56	39	48	58
Attractive nuisance	56	55	57	76	54
Bailment	47	49	43	53	59
Employees	33	37	31	41	40
Animals	49	49	55	60	48
Mineral rights	76	83	86	94	91
Estate planning	35	39	50	47	41
Land	49	58	43	53	58
Water rights	56	55	64	62	43
Average of correct responses ² ...	48	50	49	53	52
Number of farmers ³	71	82	7	17	22

¹High school education plus higher educational credits.

²Weighted average of fact situations.

³Three farmers did not respond.

LEGAL SOLUTIONS TO FACT SITUATIONS

All of the fact situations are stated in this portion of the study and are discussed according to category and subject area. The legal solution to each fact situation is presented and explained. Some of the more typical farmer responses were included when appropriate. All references to the Code of Alabama are to the 1975 Code unless otherwise cited. The legal solutions given apply directly to the fact situations included only in the study. Real life situations may have different circumstances, thus requiring other legal solutions. All assumptions made are for the purpose of clarification.

Contracts

A contract is a promissory agreement between two or more persons that creates, modifies, or destroys a legal relation (12). Each person has certain rights and responsibilities which may differ depending upon the type of contract agreed upon. The essential elements of a contract are: (1) a mutual agreement, (2) consideration, (3) competent parties, or parties with legal capacity, and (4) legal subject matter and form.

An agreement is made between the parties when an offer is made by one person and is accepted by another. An offer is a conditional promise that the party making the offer is willing to perform some act. Acceptance of an offer occurs when the other party agrees to meet the conditions placed on the offer. Thus, in order for a contract to be enforceable, an offer must be made and accepted.

Consideration is the price paid or something given in exchange for a promise. Consideration usually benefits the person making the promise and is detrimental to the one accepting in that there is a promise to relinquish a legal right at the request of another. Consideration therefore, can simply be one promise in return for another promise.

Competent parties are persons who are legally competent to enter into a contract. For a contract to be legal and enforceable by either party, all parties involved must be of legal age and sane. Alabama statutory law sets the legal age at 19 (35). If a person lacks the mental capacity or legal age to enter into a contract, then there may be grounds to rescind the contract.

The subject matter and form of a contract must be in proper legal form. Contracts must be consistent with law and public

policy, otherwise they are unenforceable as well as illegal.

The subject area of contracts was composed of nine fact situations, 1-9. The situations are stated and discussed below according to Alabama statutory and case laws.

Situation No. 1.

Mr. Brown hired a new roofing company to repair the roof of his barn. The roofer, being new in town, mistakenly went to Mr. White's farm and repaired the roof on his barn. Mr. White watched the roofer but did not tell him that he had repaired the wrong roof until the job was finished. Under these circumstances, does Mr. White have to pay for the repairs? Yes. Mr. White would have to pay for the repairs because this is an example of a contract implied in fact. A contract may be implied from the conduct or the acts of the parties. The roofer made an honest mistake and Mr. White had the opportunity and the reason to speak up, which he did not, thereby implying by his conduct that he would pay for the service. Mr. White would be obligated to pay the roofing company the going custom rate for repairs. The law is explained in the Alabama case, *Shirley v. McNeal* (69).

Situation No. 2.

Same example as above, except Mr. White and his family were vacationing at the Gulf; therefore, the roofer had no way of knowing of his mistake. In this case, does Mr. White have to pay for the repairs? No. The court will not "give relief to a complainant who has made improvements upon land, the legal title to which was in defendant, where there has been neither fraud, nor acquiescence on the part of the latter, after he had knowledge of his legal rights" (49). Mr. White was not responsible for the repairs, however, he did benefit from the service. A court could decide that Mr. White was "unjustly enriched" and, although he would not have to pay the going custom rate for repair, he might have to pay the value added to the roof from the repairs.

Situation No. 3.

On Monday, Mr. Smith sent Mr. Jones a letter stating he would buy Mr. Jones' registered Hereford bull under the conditions they

had discussed previously. Mr. Jones received the letter Tuesday and mailed his acceptance of the offer Tuesday afternoon. Wednesday morning, Mr. Jones telephoned Mr. Smith and explained that he no longer wanted to sell his bull. Is there a contract? Yes. The contract as specified in the offer is complete when the offer is accepted and the acceptance is placed into the authorized method of communication and directed to the one making the offer. Mr. Smith used the mail to make the offer and, thus, impliedly authorized Mr. Jones to use the mail to send his acceptance. The acceptance became legally effective when Mr. Jones put it in the mail Tuesday afternoon (57).

Situation No. 4.

Same example as above, except Mr. Jones, the bull's owner, did not make any written or verbal reply to Mr. Smith's offer. Is there a contract? No. Mr. Jones, by remaining silent, did not necessarily intend to accept Mr. Smith's offer, therefore, there is no contract, *Denson v. Kirkpatrick Drill Company* (48). Silence under very unusual circumstances may possibly serve as acceptance where it had been used and accepted in previous dealings.

Situation No. 5.

Mr. Jones contracted to paint Mr. Smith's barn. The day before Mr. Jones was to begin his job, lightning struck the barn and destroyed it. Does Mr. Smith still have to pay Mr. Jones? Mr. Jones cannot perform his service because the barn is no longer in existence thus his task becomes impossible because of the destruction of the subject matter. According to **Corbin on Contracts**: "If the specific performance promised by the contractor becomes impossible, either by destruction of the specific subject matter, the death of a necessary person, or the nonexistence of the specifically contemplated means of performance, his duty is discharged unless the parties expressed a contrary intention (41)." The destruction of the barn was neither Mr. Jones' nor Mr. Smith's fault. They had no control over the action, and both would be relieved of their contract obligations because of impossibility of performance.

Situation No. 6.

A real estate broker from Florida described to you a tract of land containing a large pond. Relying on this information, you

became so interested that you signed a contract for the land without seeing it first. Unfortunately, when you finally did go to Florida to see the land, there was no pond on it at all. Do you have grounds to cancel the contract? Yes. There would be grounds to cancel the contract. This was legally upheld in the case *International Resorts Inc. v. Lambert* (59). The doctrine of "let the buyer be aware" generally applies regarding conditions open to observation when selling land. The doctrine does not, however, bar the right of the purchaser to rely upon statements and representations of material facts made by the vendor to induce the purchaser to enter into the contract for the purchase of the land; nor does it exempt the vendor from responsibility for the statements and representations which he makes to induce the purchaser to act, when, under the circumstances, these amount to fraud in a legal sense (59).

Situation No. 7.

On Thursday, Mr. White orally agreed to sell 100 bushels of corn to Mr. Brown for \$2.40 per bushel. On Friday, both men signed a written contract which stated that the corn would be sold for \$2.60 per bushel. What price does Mr. Brown have to pay, \$2.40 per bushel as agreed in the oral contract or \$2.60 as stated in the written contract? Mr. Brown would be required to pay the \$2.60 per bushel as stated in the written contract because of the parol evidence rule. The parol evidence rule is applied when an oral contract is followed by the execution of a written contract. Code of Alabama, Section 7-2-202, states "Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement . . ." (29). Oral evidence arising prior to creation of a written contract is not admissible as evidence if it contradicts the written contract terms. Because of this, the written contract should be thoroughly read and understood before it is signed.

Situation No. 8.

Mr. Brown signed a written agreement to buy some farm machinery valued at \$1,500 with three annual payments. A few

days later, Mr. Brown orally agreed to make his payments at the end of each month. Is this oral agreement legally enforceable? No. Contracts may be modified without consideration but, in this case, the contract as modified comes under Section 7-2-209 of the Alabama Code. This section permits the modification of a contract for the sale of goods without additional consideration, but if the original contract to be enforceable had to be in writing, then the modification should be in writing.

In addition, the requirements of the "Statute of Frauds" must be satisfied if the contract as modified is within its provisions (30). The statute requires that some contracts must be in writing to be legally enforceable. The Alabama statute of frauds appears in Section 7-2-201 of the Alabama code which states: "(1) Except as otherwise provided in this section, a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought by or by his authorized agent or broker" (28).

Situation No. 9.

Mr. Jay had a contract with Thompson's Construction Company to build a farrowing house on his farm. After building half of the house, Mr. Jay ordered Thompson's Construction Company to stop because of a price decline for hogs. What legal action, if any, can the construction company take? The construction company can take legal action because Mr. Jay breached (broke) the contract, thereby preventing its full performance. An Alabama case maintained that "if the complainants (ones making the complaint in a legal proceeding) breached an essential and dependent feature of the contract, the contractor may abandon it and either (1) sue on the contract and recover an amount equal to a proportion of the contract price which he has earned, or (2) sue for work and labor done on a quantum meruit (reasonably entitled sum) without regard to the price named in the contract. The construction company can sue for breach of contract and recover either a proportion of the contract price or as much as the construction company is reasonably entitled to for building half of the house" (16).

Offers

Being one of the essential elements of a contract, an offer is a conditional promise in that the party making the offer is willing to perform some act. Offers were handled as a separate category to emphasize what constitutes an offer. The subject area of offers has three fact situations (10-12) which are as follows:

Situation No. 10.

Mrs. Down asked Poultry Farms their price per dozen for eggs. Poultry Farms stated a price of 50 cents per dozen. Mrs. Down then ordered six dozen at this price. Was there a contract? The farmers interviewed scored the lowest percentage on this particular question, as only 10 percent gave the correct response. The typical response was that there was a contract, an oral one, because Mrs. Down ordered the eggs. This response was incorrect in that no contract existed because there was no offer made. Poultry Farms' quotation of a price was only an invitation to make an offer. The Code does not regulate the sales contract with respect to what constitutes an offer and what is merely an invitation to negotiate. According to **Corbin on Contracts**, Section 26, "a quotation price is not an offer; for a mere quotation of price leaves unexpressed many items that are necessary to the making of a contract" (39). Because an offer is a necessary element of a contract, there can be no enforceable contract if there is no offer. Mrs. Down could have made an enforceable oral contract by adding, after she received the quotation: "My name is Mrs. Down, will you please reserve six dozen eggs for me at 50 cents per dozen to be picked up by me by 5 p.m." A positive answer would complete the contract. There must be an acceptance of an offer in order to make an enforceable contract.

Situation No. 11.

Mr. Law made a written offer to sell his farm but did not state when the offer was to expire. After 1 year, a buyer tried to accept his offer. Does Mr. Law have to sell his farm? No. "An unaccepted offer terminates, by lapse of time, at the expiration of the time limited for its acceptance, or, if no time is fixed in the offer, at the expiration of a reasonable time" (19). Mr. Law's written offer did not include an expiration date, so his offer could

expire after a reasonable time. What constitutes a reasonable time is a question of fact to be determined by a jury. Because Alabama land values are rapidly increasing, it is assumed a reasonable time would most likely be less than 1 year. Corbin summarizes reasonable time as follows: "If the offerer has not communicated a specific time limit with sufficient definiteness, the power of acceptance by the offeree continues for a reasonable time. This is the time that a reasonable man in the exact same position of the offeree would believe to be satisfactory to the offeror. If the subject matter of an offer to buy or sell is one that has a fluctuating value in the market, this fact strongly tends to shorten the time that will be held reasonable for acceptance" (40).

Situation No. 12.

Smith's hardware store advertised garden tools in the local newspaper at a specified price. The tools were found to be priced higher than what was stated in the ad. Does Mr. Smith have to sell at the advertised price? A majority of the farmers believed that Mr. Smith would have to sell at the advertised price, otherwise it would be false advertising if he did not. Advertisements in newspapers generally do not constitute legal offers but are understood to be requests for an offer. The persons making the advertisements do not intend to enter into a binding agreement because the major terms are usually not included in the advertisements.

Alabama has no cases on this subject matter, so the *Corpus Juris Secundum* was consulted for the general legal principle. C.J.S. states: "Business advertisements published in newspapers and circulars sent out by mail or distributed by hand, stating that the advertiser has a certain quantity or quality of goods which he wants to dispose of at certain prices and on certain terms, are not offers which become contracts as soon as any person to whose notice they may come signifies his acceptance by notifying the other that he will take a certain quantity of them, but are ordinarily construed merely as an invitation for an offer for purchase on the terms stated, which offer when received may be accepted or rejected, and which, therefore, does not become a contract of sale until accepted by the seller; and until a contract has been so made the seller may modify or revoke such prices or terms" (20). As in most situations, there are exceptions to this rule. For example, the Federal Trade Commission has certain

regulations with respect to grocery stores, and there have been isolated cases where a court has held that the ad was so specific that it constituted an offer.

Mistake

There are a variety of mistakes involved in contract law. A mistake may occur when there is a misunderstanding as to the terms of the contract or in the execution of the contract itself. The inclusion of mistake in the study was to point out that contracts can be rescinded. Only one fact situation was in the subject area of mistake.

Situation No. 13.

Mr. Bay purchased a tract of land from Mr. Knight. Both believed that the tract contained 200 acres. After signing the contract to purchase the land, Mr. Bay learned that the land consisted of only 180 acres. Mr. Knight had no idea of the mistake, as he had originally bought the tract as 200 acres. Is there a contract? Yes. Mr. Bay and Mr. Knight do have a contract because Mr. Bay signed the purchase agreement. The real question here was if Mr. Bay could rescind the contract. The principle of mutual mistake is cited in *Glenn v. City of Birmingham*. "Cancellation or rescission is more common in instances where there is a formal assent, but a mistake shared by both parties to the contract, as to some fundamental matter forming the inducement to the contract, cancellation or rescission is freely and frequently granted" (53). A mutual mistake exists in that both Mr. Bay and Mr. Knight believed that the tract of land contained 200 acres. If a court would find the 20-acre shortage "material" to the contract, it is then possible that the court may permit Mr. Bay to rescind the contract.

Negligence

Negligence is a type of conduct that may constitute a legal tort or civil wrong. Negligence is defined in "Black's Law Dictionary" as "the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do" (13). The failure to exercise ordinary care can be negligence; it depends on

the degree of carelessness and the type of duty owed. Degree of carelessness could range anywhere from a "willful and wanton" act to a failure to exercise "due care." When one acts in such a manner that it is known that injury would likely result, then it is "willful and wanton." "Due care" is how a reasonable person would act under similar circumstances. A certain duty of care is owed to the injured person subject to the individual circumstances and the type of relationship between the parties involved. If it was determined that a person was guilty of negligence, damages could be collected for injuries or losses incurred. The subject area of negligence has two fact situations.

Situation No. 14.

Mr. Smith forgot to tell his farm employee that the brakes were faulty on the pickup truck. As a result, the employee was involved in an accident and required hospitalization. Is Mr. Smith liable for his employee's accident? Yes. Mr. Smith would be liable for the accident because he is guilty of negligence. Not only did Mr. Smith have knowledge about the faulty brakes, he also did not inform his farm employee about the problem. "Accordingly it is the duty of the employer to exercise reasonable care to warn the employee of any risk of harm and to acquaint him with any dangerous features of the equipment, premises, or procedures with which he works" (58). Mr. Smith did not act as an ordinary and prudent man would have acted under similar circumstances to avoid the injury. The risk of injury could easily have been foreseen; however, Mr. Smith took no action to avoid any injuries.

Situation No. 15.

Same example as above, however, in addition, a note was taped on the windshield in plain view warning of the faulty brakes. Is Mr. Smith liable in this case for his employee's accident? No. It is assumed in this case that the farm employee could read and was able to see the warning note which was placed in plain view. Based on these assumptions, the employee contributed to his own injuries by driving the truck. The employee would be guilty of contributory negligence and, therefore, could not collect for his injuries. It should be noted that Mr. Smith still had the same duty of reasonable care to warn his employee of any risk of harm as he had in the previous fact

situation (58). For purpose of this question, it is assumed the notice was reasonable warning; however, it is suggested that a verbal warning also be given for additional insurance against injury.

Farm Visitors

Farmers are associated with many different kinds of people connected with both business and pleasure activities on the farm. A duty of care is owed to all farm visitors by the landowner. The degree of legal duty to protect a visitor from injury varies with the type of farm visitor. Alabama recognizes three different legal classifications — the trespasser, the licensee, and the invitee (6). A trespasser is one who intentionally or unintentionally enters the property of another without the express or implied permission of the owner. A licensee is one who is on the landowner's property with permission, and is there for either the farmer's benefit or for the benefit of both. In addition, the invitee may be one who has been invited to the farm for a public purpose, such as an "open" recreational or sporting activity.

The three classifications of farm visitors are covered in seven fact situations.

Situation No. 16.

Mr. John went swimming in Mrs. Rivers' lake without her knowledge. Mr. John slipped and broke his leg. Is Mrs. Rivers liable? No. Mr. John would be classified as a trespasser on Mrs. Rivers' property. He went swimming in Mrs. Rivers' lake without her permission and, as a result, was injured. Even though Mr. John was a trespasser, a duty of care is owed to him. This duty of care to trespassers was defined in an Alabama case which used the *Hammond v. Realty Leasing Inc.* case as a precedent, which held that "if the injured party is determined to have been a trespasser, the landowner owes only the duty not to wantonly or intentionally injure him" (71). Since Mrs. Rivers did not wantonly or intentionally injure Mr. John, she owed no duty of care to him and therefore would not be liable for his injuries suffered from the accident.

Situation No. 17.

Mrs. Rivers did not want anyone swimming in her lake so she had several traps hidden around the lake. A trespasser was

seriously hurt when he tried to go swimming. Is Mrs. Rivers liable? Yes. Mrs. Rivers' legal duty of care is to not "wantonly or intentionally" injure the trespasser as explained in the preceding fact situation. "Where the injured party is a trespasser, a trap or pitfall exists only if the landowner prepares the dangerous condition in expectation of the trespass" (2).

Situation No. 18.

Mr. Rogers mistakenly believed he had permission to hunt on Mr. Land's property. If Mr. Rogers does go hunting, is he trespassing? Yes. A trespass has been committed even though Mr. Rogers was under the impression that he had the right to be there. According to Section 9-11-241 of the Code of Alabama, any person who hunts or attempts to hunt without the written permission of, or accompanied by the landowner, is guilty of a misdemeanor. This section applies to the daylight hours, while Section 9-11-242 covers hunting done at night. Both sections refer to all people there for hunting purposes except for family members, guests, servants, or agents of the landowner (32). *Daniel v. Hodges* provides the case law for this particular area of trespass. "Hunting on another person's land in the daytime without his permission is a misdemeanor" (44). Based on the Alabama Code, Mr. Rogers could be fined "not more than \$500 for each offense" if he was hunting during the day, and "not more than \$100" if hunting at night (33).

Situation No. 19.

Mr. Land told Mr. Rogers he could hunt in his woods, but did not tell him about an old covered well near the woods. Mr. Land had not inspected the well for 2 years and was not aware the well cover had rotted. Mr. Rogers fell into the well and suffered multiple fractures. Is Mr. Land liable? Title 14, Section 284 of the Alabama Code Recompiled 1958 states, "all persons on whose premises or lands are located abandoned or unused wells, ...shall cover or fill them up" (37). This section was declared unconstitutional by the Supreme Court of Alabama in 1961 (62). Mr. Land, therefore, was not required by law to have his unused well covered or filled up. To find the duty of care owed Mr. Rogers, it was imperative to know his farm visitor classification. "If plaintiff is found to have been on defendant's property with his consent or as his guest, but with no business purpose, he attains the

status of licensee, and is owed the duty not to be willfully or wantonly injured or not to be negligently injured after the landowner has discovered his peril" (71). Mr. Rogers was hunting with Mr. Land's consent for his own benefit, so he would be classified as a licensee. Mr. Land's duty is not to "willfully or wantonly" injure Mr. Rogers. "Wantonness" was defined in *Tolbert v. Gulsby* as "the conscious doing of some act or the omission of some duty under the knowledge of the existing conditions, and conscious that from the doing of such act or omission of such duty, injury will likely or probably result" (73). Since Mr. Land did not have any knowledge the boards covering the well were rotten, Mr. Land did not owe any duty of care to Mr. Rogers. Despite the foregoing, the law is constantly changing and it is important for farmers to warn all farm visitors of known dangers or hazardous conditions on his farm.

Situation No. 20.

Mrs. Wall drove on Mr. Barns' private road every Saturday for 2 years in order to save time in getting to town. Not once did Mr. Barns tell her to take the public road. Is Mrs. Wall trespassing? Yes. This is a trespass since Mrs. Wall had an alternate route and could not demand a right-of-way over Mr. Barns' property under Alabama Code Section 18-3-1 (34). "A private road, granted under the Code, cannot be used by the public as a matter of right. There is no distinction between such a private road and a private road obtained by grant or prescription; and it is settled, in case of the latter, that trespass would lie against a stranger for entering upon the road" (68). Mrs. Wall could not obtain a prescriptive right, or the right to continue driving on the road because she had used it for 2 years. She would be trespassing by going on the road. In addition, "to sustain an action of trespass to realty by another, there must have been an entry on land in the possession of plaintiff actually or constructively without express or implied authority" (3). While no Alabama cases were found that implied a license (permission) from continuous trespass, such license has been implied in other states (see 62 Am. Jur. 2d, Premises Liability, Section 51 p. 292) (4).

Situation No. 21.

Mr. Bay had advertised his farm for sale. A prospective buyer, while inspecting the barn, stepped on a cracked rung of a ladder

and fell. Is Mr. Bay liable? Yes. The buyer had entered Mr. Bay's property for the purpose of inspecting the farm. The prospective buyer would be classified as an invitee. "An invitee is a visitor, a transient who enters property at the express or implied invitation of the owner or occupier for the material or commercial benefit of the occupier" (65). In the case of invitees, Mr. Bay had the duty of care to make a reasonable inspection to determine that the farm was in a reasonably safe condition. The duty of care owed to invitees is explained in *Tice v. Tice*. "The plaintiff claims the status of a business invitee on her son's property. Assuming that she is an invitee, the duty owed to her by the defendants is the exercise of ordinary and reasonable care to keep the premises which the invitee is aware of or should be aware of in the exercise of reasonable care. In this case, the plaintiff must prove, in order to recover, that her fall resulted from a defect or instrumentality located on the premises as a result of the defendant's negligence and of which the defendants had or should have had notice at the time of the accident" (72). If Mr. Bay had made a reasonable inspection of the barn, he would have noticed the cracked rung on the ladder. It is reasonable to assume a prospective buyer would use the ladder when inspecting the barn, thus some action should have been taken to prevent the accident.

Situation No. 22.

Mr. Brown had Mr. White's permission to camp and fish on his land next to the river. After 2 weeks, Mr. White asked Mr. Brown to leave immediately. Mr. Brown refused to leave and stayed for another night. The next morning, Mr. Brown injured his back when he stepped in a hole on the premises. Is Mr. White liable for Mr. Brown's injury? No. Since Mr. White asked Mr. Brown to leave, it would change Mr. Brown's status to a trespasser even though he originally was given permission to be there. Regardless whether Mr. Brown was a trespasser or a licensee at the time of his injury, there would be no reason to believe Mr. White was liable (see case answers to fact situation questions 16 and 19).

Attractive Nuisance

The doctrine of attractive nuisance is an exception to the general duty of care owed to children. Generally, if children enter onto someone else's property with adults, they receive the same

duty of care owed to adults depending upon their classification as a trespasser, licensee, or invitee. The attractive nuisance doctrine maintains that a greater duty of care is owed to children to prevent injuries when they come on property and play about unusually attractive structures. Alabama follows the doctrine of attractive nuisance; however, before one can recover for injuries, several requirements must be met. These requirements are discussed in the fact situation of the subject area of attractive nuisance.

Situation No. 23.

Mr. Jones lived in town next door to a kindergarten school. He had been working outside for the past few mornings building a cabinet, so he kept all of his power tools in his unlocked utility shed. A kindergartner, attracted by noise, wandered into the shed and began playing with some of Mr. Jones' tools. As a result, the child was badly cut. Is Mr. Jones liable? Yes. However, no Alabama case was found supporting such a conclusion and the answer in this case is cautionary, based on the following Alabama Supreme Court statement: "This court has previously noted the similarity between Alabama cases using the straight negligence doctrine in relationship to trespassing children and Section 339, Restatement of Torts 2d; however, for clarity and certainty's sake now and in the future, this court adopts Section 339, Restatement of Torts 2d, as controlling, regardless of whether the children are licensees or trespassers." Restatement of Torts 2d, Section 339 (1965) reads . . .

"A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if:

(a) the place where the condition exists is one upon which the possessor knows or has reasons to know that children are likely to trespass, and

(b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and

(c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and

(d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and

(e) the possessor fails to exercise the reasonable care to eliminate the danger or otherwise to protect the children" (74).

It was assumed all the requirements of the attractive nuisance doctrine applied to the fact situation. Mr. Jones lived next door to a kindergarten school, and the power tools could attract young children which could injure them. Mr. Jones should have kept the tools in a locked shed or out of reach of young children.

Bailment

Bailment is a delivery of goods or personal property, by one person to another, to be held in trust for a specific purpose, with the intent that such goods or property be returned or accounted for when the intended purpose has been accomplished. The owner of the personal property is the bailor and the one in possession of the property is the bailee. Bailments can be either for the benefit of the bailor, the bailee, or for both. Each case requires a different degree of care depending upon the circumstances involved. Two fact situations, 24-25, are in the subject area of bailment.

Situation No. 24.

Mr. Smith had his furniture stored in a warehouse. The main water pipe burst under the adjacent office building and flooded the area in which Mr. Smith's furniture was located. Does the warehouseman have to pay for the damaged furniture? Most of the farmers believed that the warehouseman should pay for the damaged furniture on the basis that Mr. Smith had stored his furniture there and had paid rent for the service. The legally correct answer was that the warehouseman would not have to pay for damages. "A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances, but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care" (31). The water pipe broke under the adjacent office building which, despite all precautions, the

warehouseman could not have prevented or known about the pipe breaking. The warehouseman would be liable if an agreement pertaining to water loss damage had been previously agreed to. It was not stated that such an agreement existed.

Situation No. 25.

Mr. Bay asked his brother-in-law if he could use his hay baler. The baler's plunger often stuck and Mr. Bay was informed of this. While in the field, the plunger stuck and Mr. Bay's hand was hurt when he tried to fix it. Who should pay for Mr. Bay's injuries? Mr. Bay (bailee) had borrowed the hay baler for his own benefit without paying a fee to his brother-in-law (gratuitous bailor). "As a general rule, the only duty which a gratuitous bailor owes either to the bailee, or to third persons, is to warn them of known defects which render the bailed chattel dangerous for the purpose of which it is ordinarily used" (18). The brother-in-law owes Mr. Bay the duty to warn him of the baler's faulty plunger which he did. This question was treated as a bailment case and not as a product liability case.

Employees

Farmers hire additional help for many reasons — from a shortage of manpower, to a need for persons skilled in a particular service or trade. Liability for the actions or injuries of hired employees is determined by the legal classification of employees. Three classifications exist: (1) servant, (2) agent, and (3) independent contractor. A servant is a hired person who is subject to the direction and control of the employer (master) in performing his tasks. An agent is a hired person who has the authority to act for his employer (principal). An independent contractor is a person contracted to a job free from control or direction of others subject to his individual judgment.

All three employee classifications and the liability associated with each are covered in the subject area of employees, 26-30.

Situation No. 26.

Joe was employed as a general farm worker in Mr. Jay's pecan orchard. While gathering pecans, Joe discovered two boys stealing pecans. Catching sight of Joe, one of the boys ran while

the other climbed a tree. Joe tried to scare the boy out of the tree with a stick, but hit him and he fell, fracturing his arm. If Joe was acting within the scope of his employment, can Mr. Jay be held liable for the injury? Yes. Assuming that a jury would find Joe liable for the injury, then Mr. Jay would also be liable based on the following: "A master, under Alabama law is responsible for his servant's act within the scope of his authority, even though the acts were done willfully or maliciously . . ." (77). Joe was classified as a servant because he was hired as a general farmhand requiring no special training. Under a servant-master relationship, Mr. Jay (master) would be liable for Joe's (servant) action if he was acting within the scope of his employment, which was stated in the question, at the time the injury occurred.

Situation No. 27.

Mr. John acted as an agent for Mrs. Rivers and purchased the feed needed for her farm. Mrs. Rivers fired Mr. John, but did not notify the feed store. Mr. John later purchased some feed for his own cattle. Does Mrs. Rivers have to pay for the feed? Yes. Mr. John had been acting in the capacity of an agent buying feed for Mrs. Rivers. The feed store had no knowledge or notice of his dismissal, therefore the feed store had a right to assume the feed was for Mrs. Rivers. The liability of the employer in the principal-agent relationship is summarized in *Cooper v. Cooper*. "As affecting the rights of third persons, the acts of a former agent within the scope of his original authority will, notwithstanding its revocation, continue to bind the former principal to those third parties to whom the agent has been thus accredited, and who deal with him in good faith in justifiable reliance on his former authority, until due notice of its revocation has been given in the manner required by the circumstances of the case" (38). Mrs. Rivers would have legal recourse to get payment from Mr. John.

Situation No. 28.

Mr. Jones was authorized to sign checks as Mr. Smith's agent. Mr. Jones signed only his name to a check, he did not sign as a representative for Mr. Smith. Mr. Smith went bankrupt and was unable to pay the check. Can Mr. Jones be held individually liable for the amount? Yes. The check failed to identify Mr. Smith as the principal, and the person receiving the check had no way of knowing that Jones was acting as an agent. "It is a well-settled

principle of law that an agent who, at the time of entering into a contract with another, does not disclose the fact that he is an agent, and that he is acting as such for some other person in making the contract, may be held personally liable on such contract" (42). It is to be noted that this particular situation would be unique in present-day banking practices because the checks would normally identify the principal.

Situation No. 29.

Billy Law, being a minor at 17 years of age, had written authorization by his father to sell one of his tractors. An interested buyer refused to deal with Billy on the grounds that he could not legally act as his father's agent. Is the prospective buyer correct? No. Billy can legally act as his father's agent even though he is a minor, *Cornelius v. Moore* (43). Billy's father had given him written authorization to act as his agent, even though Billy lacked the capacity to contract in his own behalf.

Situation No. 30.

A farmer hired an aerial spray company to spray the herbicide 2, 4-d over his field. The herbicide drifted over to a neighbor's cotton field and the cotton was damaged. The farmer had no control over the job done by the spray company, so, can he be held liable? Yes. The aerial spray company was classified as an independent contractor because it was hired to do a specific job under no control of the farmer. Generally, a farmer is not liable for the acts of an independent contractor, however, some exceptions do exist. One exception is when an independent contractor is hired to perform work which is inherently dangerous. "It is also generally recognized that one employs a contractor to carry on an inherently or intrinsically dangerous activity cannot thereby insulate himself from liability . . . We hold that aerial application of insecticides and pesticides fall into the intrinsically or inherently dangerous category and, therefore, the landowner cannot insulate himself from liability simply because he has caused the application of the product to be made on his land by an independent contractor. In so holding, we do not adopt the view as some courts have done, that such activity is ultra-hazardous thereby rendering one strictly liable, not withstanding his exercise of the utmost care. The test of liability

on the part of the landowner is one of reasonableness. Liability is not absolute but is imposed on the landowner for his failure to exercise due care in a situation in which the work being performed is sufficiently dangerous that the landowner himself has a duty to third persons who may sustain injury or damage from the work unless precautions are taken in the performance thereof" (14). The farmer would be liable on the grounds that aerial spraying is considered to be inherently dangerous in Alabama. Liability would not be imposed entirely on the farmer, however, as action could also be taken against the spray company. Regardless of the degree of liability, a farmer should take precautionary measures before any damage or injury is done.

Animals

Farmers should be concerned about the damage done by and to animals. Many statutory and case laws exist which deal with the rights and duties involved in keeping animals. The subject area of animals consists of eight fact situations, 31-38.

Situation No. 31.

Mr. Ray's Angus cows broke through and crossed a division or boundary fence into Mr. Thompson's field and damaged his corn crop. Mr. Ray was not responsible for maintaining that portion of the fence. Is Mr. Ray liable for his cows' damage? No. Mr. Ray and Mr. Thompson shared a fence that was on the boundary between the two owners' land. Mr. Ray's cows broke through a part of the fence that was Mr. Thompson's responsibility to keep in repair. Mr. Ray was not negligent in letting his cows out nor did he willfully let them stray, thus he would not be responsible for the cows' damage. It was declared in *Kirkland v. Eford* "if coterminous landowners enter into an agreement by which each of them undertakes to keep designated parts of a partition fence in repair, and one of them fails to perform his part of the agreement, whereby his neighbor's stock stray upon its premises, as plaintiff proposed to show was the case between himself and defendant, we apprehend it cannot be justly said that the owner of the stock has either negligently or willfully permitted his stock to go at large upon the premises of his neighbor . . . We think the landowner whom in good faith relies upon a contract with his coterminous owner of the sort noted above does not violate the

statute. Section 5889 of the Code of 1907 is not a criminal statute — it gives the owner of premises within any stock-law district a lien upon stock for any damage done to crops, shade or fruit trees, or ornamental shrubs if the owner has knowingly, voluntarily, negligently, or willfully permitted his stock to go at large upon the premises of another, and provides a civil remedy” (60). The applicable stock law similar to 5889 is contained in Alabama Code, Section 3-5-2 and Section 3-5-3.

Situation No. 32.

Mr. Bay's Angus cows entered Mr. Thompson's corn field by crossing over an exterior fence or one not located on the boundary between the two men's property. If Mr. Bay's cows damaged the corn, is he liable? Yes. It was assumed that Mr. Bay was negligent in maintaining his fence and, therefore, had not taken adequate measures to prevent his cows from crossing over his fence and damaging Mr. Thompson's corn. Section 3-5-2 (a) of the Code provides that it is “unlawful for the owner of any livestock or animal as defined in Section 3-5-1 to knowingly, voluntarily, negligently, or willfully permit any livestock or animal to go at large in the State of Alabama, either upon the premises of another or upon the public lands, highways, roads, or streets in the State of Alabama” (23). In addition, Section 3-5-3 (a) states that the “owner of such livestock or animal being or running at large upon the premises of another or upon the public roads, highways, or streets in the State of Alabama shall be liable for all damages done to crops, shade or fruit trees, or ornamental shrubs and flowers of any person, to be recovered before any court of competent jurisdiction” (24).

Situation No. 33.

Mr. Rogers and his son were driving their 15 Holstein cows across the road towards the barn when a car came speeding around the curve and couldn't avoid hitting and killing one of the cows. The driver of the car had just accelerated to pass another car on the curve and, thus, did not see the cow crossing caution sign on the roadside. Who is liable? The driver of the car. This conclusion was based on the presumption that Mr. Rogers was not contributory negligent in any way in the manner in which he was moving the cattle across the highway. And it was further

presumed that the driver of the automobile was acting in a negligent manner by speeding and passing on a curve. Under Section 3-5-3 of the Alabama Code, a motorist who is trying to collect for damages resulting from a collision with stock on the highway has a heavy burden to prove that the owner knowingly or willfully put or placed such stock upon the highway (25). It should be presumed that the owner of the cattle has a duty to give adequate and timely notice to motorists that his stock are crossing the highway. At the present time, there are no Alabama cases dealing with this specific set of circumstances.

Situation No. 34.

Mrs. Land's horse somehow managed to get out of the pasture and wandered out near the road. Mrs. Land saw the horse eating by the roadside and reminded herself to tell her husband when he was through planting. The horse strayed onto the road and was struck by a car. Is Mrs. Land liable for the damages to the car? Farmers tended to assume that Mrs. Land would be liable because she knew that her horse was out and she didn't immediately try to get it off the road. Alabama has many cases involving the collision of motor vehicles and animals on the highway. In all cases, it has been extremely difficult for a motorist to collect for damages. Referring to cases of this nature, *Carter v. Alman* said that these “cases plainly state that for recovery, a motorist must submit proof that the owner of one feasant beast placed or put it upon the highway with a ‘designated set purpose, intention, or deliberation.’ Evidence of negligence or gross carelessness is not enough” (21). Even if Mrs. Land was found to be negligent in that she did not immediately get her horse off the road, she still would not be liable. The motorist could only collect if he could prove that Mrs. Land intentionally set the horse out on the road. “There must be proof to the effect that the owner of the stock knowingly or willfully placed the stock upon the public highway . . . Willfulness signifies a designated set purpose, intention, or deliberation” (67).

Situation No. 35.

Mr. Barnes' Duroc sow had a habit of breaking out of the fence even though it was always in good repair and well maintained. The sow broke out and was crossing the road but was killed by a passing car. Is Mr. Barnes liable for damages to the car? No. Mr.

Barnes kept his fence in good repair, however, the sow somehow kept breaking out. The sow was not deliberately or intentionally put out on the road, as she got out on her own. In the case of *Carter v. Alman*, there was evidence that the owner of the cattle often had cows out of his pasture and that his fence was of insufficient height to contain them. According to the court, this was not sufficient to question whether the owner knowingly or willfully put or placed his cow upon the highway. The burden is on the motorist to prove that the owner placed or put the animal on the highway with a "designated set purpose, intention, or deliberation" (21).

Situation No. 36.

Mr. John spotted Mrs. Rivers' shepherd dog chasing his sheep and causing them to run wildly into the fence. Mr. John chased the dog away and noticed that several of the sheep had deep cuts on their legs and one ewe had been killed. The next day, Mr. John saw the dog on his property so he shot and killed it. Can Mrs. Rivers recover for her dog? No. "In determining whether a landowner is justified in killing a trespassing dog, most courts have taken the view that it is immaterial whether the dog's owner had knowledge of its vicious propensities" (5). Mrs. Rivers did not know that her dog had injured and killed any sheep. Mr. John had spotted the dog doing damage and shot and killed the dog on the grounds that he knew it had killed one of his ewes. Because Mr. John had this knowledge, Mrs. Rivers could not recover for her dog even though she was uninformed of her dog's actions. "Sheep-killing" dogs are discussed in the Alabama case *Alabama Great Southern Railroad Company v. Sheffield*. "We think this statute, prohibiting the keeping or ownership of such dog, and expressly granting immunity to any person who kills it, so outlaws the dog as a common nuisance as to destroy all property rights therein. In such cases, the plaintiff can suffer no injury to his property rights by the killing of the dog, whether done negligently or intentionally . . ." The statute is aimed at the class commonly called the "sheep-killing" dog, and dogs of like character in killing or worrying other livestock. The penal clause of the statute is directed to the owner who knowingly keeps such dogs, but the outlawry of the dog is because of its own vicious qualities. "Known to kill," etc., in the first clause of the statute, means known as a fact, not mere repute. On proof of such fact,

the owner cannot recover for the killing of the dog under any circumstances (1). The statute discussed in the Alabama case above about "sheep-killing" dogs is applicable to Section 3-1-4 of the Code of Alabama. Under this section, "any person, who, owning or having in his possession or under his control any dog or hog known to worry or kill sheep, domestic fowls, or goats suffers such dog or hog to run at large must, on conviction, be fined not less than \$5 nor more than \$50" (22).

Situation No. 37.

Mr. Jay owned a large Doberman which he kept as a watchdog. The dog was trained to protect Mr. Jay and his property. Mr. Jay kept the dog in a pen, except when it was being cleaned, then the dog was allowed to run in the yard. The dog bit a salesman while Mr. Jay was cleaning the pen. Is Mr. Jay liable? Yes. The dog was trained as a watchdog and, therefore, Mr. Jay knew that the dog had a vicious propensity or a tendency to do harm. The dog was not properly restrained when it bit the salesman; it was running loose on the property. An Alabama case upheld what was said in an earlier case, *Strouse v. Lelpf*, which stated that "the doctrine is well settled that the owner or keeper of a domestic animal which is vicious, and prone or accustomed to do violence, having knowledge of such violent disposition or habit, must safely and securely keep such animal so that it cannot inflict injury . . . All that the law requires to make the owner or keeper liable is knowledge of facts from which he can infer that the animal is likely to commit an act of the kind complained of" (66). Subsequent to the above case, the legislature enacted the following statutes: Section 3-6-1 and Section 3-6-2. Section 3-6-1 states that if "any dog shall, without provocation, bite or injure any person who is at the time at a place where he or she has a legal right to be, the owner of such dog shall be liable in damages to the person so bitten or injured, but such liability shall arise only when the person so bitten or injured is upon property owned or controlled by the owner of such dog at the time such bite or injury occurs, or when such person has been immediately prior to such time on such property and has been pursued therefrom by such dog" (26). Under Section 3-6-2, "A person shall be considered lawfully upon the private property of the owner of such dog when he is on such property, in the performance of any duty imposed upon him by the laws of this state or by the laws of the

United States of the postal laws and regulations of the United States, when reading meters, when delivering milk, when making repairs to any public utility or service upon said premises or when on such property upon the invitation, either expressed or implied, of the owner or lessee of such property" (27). A salesman is generally classified as a business invitee, therefore, he would have the legal right to be on the property.

Situation No. 38.

Mr. Knight's farm was located next to a subdivision. Mr. Knight owned 20 hogs which were kept confined. Mr. Knight received many complaints from the subdivision manager concerning the odor from his hogs which he said was terribly offensive to his residents. Can the subdivision take any legal action against Mr. Knight? Yes. The smell was terribly offensive and interfered with the subdivision residents' rights to enjoy the property. The hogs' odor annoyed and disturbed the residents to such an extent that it was a nuisance. In the *Baldwin v. McClendon* case, it was ruled that the hog-raising operation was a nuisance. "Fact that hog-raising operation was carried on in a rural community given over almost entirely to agricultural pursuits was a factor to be considered in determining whether odors emanating from the property constituted a nuisance, but there were other factors, including proximity of the operation to neighbor's home, intensity and volume of odors, their interference, if any, with neighbors' own well-being and enjoyment of their home, and any consequential depreciation in the value of the home" (7). *Baldwin v. McClendon* used the Code to determine if the hog-raising operation constituted a nuisance. "To constitute a nuisance it is not necessary that smells be harmful or unwholesome if they are offensive so as to impair comfortable enjoyment of other property by persons or ordinary sensibilities. Code of Alabama, Title 7, Section 1081 (1958) (Code of Alabama 1975, Section 6-5-120) . . . In applying this principle, it has been repeatedly held that smoke, offensive odors, noise, or vibrations, when of such degree or extent as to materially interfere with the ordinary comfort of human existence, will constitute a nuisance" (8). The fact that the hog-raising operation met sanitary standards for similar operations would have little importance because the main issue is whether the very uncomfortable condition was caused by the operation. "Moreover, assuming that the appellants' operation

meets some set of sanitary standards for similar operations, this would not affect the appellees' right to equitable relief, because the issue is not whether the appellants were negligent, or their business lawful, but whether or not from the inherent qualities of the business, or the manner in which it is conducted, it directly causes substantial injury to the properties of the appellees, or produces material annoyance and inconveniences to them in the comfortable environment of their home" (9). A recently decided Alabama case, *Gregath v. Bates*, agreed with the findings mentioned regarding a nuisance. "At this point we note there is sufficient evidence in the record to support a finding of a nuisance within the purview of *Baldwin v. McClendon* . . . The record is replete with testimony concerning strong, obnoxious, and sickening odors, alone with the presence of flies coming onto plaintiffs' property" (55). *Gregath v. Bates* also noted that a court order could be obtained to prohibit the continuation of an operation considered to be a nuisance. "The law in Alabama is settled in that an injunction in a nuisance is a proper remedy to restrain a repeated or continuing trespass when the remedy at law is inadequate because of the nature of the injury or because of a multiplicity of actions necessary to obtain relief" (55).¹

Mineral Rights

A farmer who owns land is generally entitled to the surface rights of his property and all that lies beneath it. Minerals which lie beneath the surface are a part of the rights owned by landowners. One fact situation, 39, makes up the subject area of mineral rights.

Situation No. 39.

Mr. Law wanted to sell his mineral rights to a company in Birmingham, but keep the land for his own use. Can Mr. Law legally separate the mineral rights from the surface rights? Yes.

¹This provision of the law was changed slightly by the 1978 Revision of the Code of Alabama. Section 6-5-127 states "No agricultural, manufacturing or other industrial plant or establishment, or any farming operation facility, any of its appurtenances or the operation thereof shall be or become a nuisance, private or public, by any changed conditions in and about the locality thereof after the same has been in operation for more than one year when such plant, facility or establishment, its appurtenances or the operation thereof was not a nuisance at the time the operation thereof began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment, or any farming operation facility, or any of its appurtenances."

Mineral rights are a separate and distinct interest in land. Mr. Law could legally sell or lease part or all of his mineral rights without affecting his surface rights as long as he owned the rights prior to the deal. "Nor can there be any doubt that possession of land in which mineral rights may exist and be exercised of the mineral as distinct from the surface, or of the surface as distinct from the minerals" (70).

Estate Planning

A farmer should establish a sound estate plan so the disposition of his estate is in accordance with his objectives. Estate planning helps alleviate taxes, provides for a farmer's survivors, and transfers property according to a farmer's wishes. Several estate planning tools are available; however, the will is the most common tool used by Alabama farmers. A will is a legal declaration of how one wishes to distribute his property after his death. The subject area of estate planning is composed of six fact situations, 40-45.

Situation No. 40.

Mr. Thompson died leaving 50 acres of land to his wife for her lifetime use, and at her death, the land would go to his son. Can Mr. Thompson's wife, as a life tenant, give or sell her interest? The typical farmer response was that Mr. Thompson's wife could not give or sell her interest because the land was supposed to go to his son. Legally, Mr. Thompson's wife can give or sell her interest. She was given the land for her lifetime use and she cannot transfer a greater interest than she has. Thus, if someone does get or buy her interest, they would only have use of the land for as long as she lives. At her death, regardless of whether or not she was still in possession, the land would go to her son. "The widow takes a life estate which she may convey to another as any other life estate . . . and if the widow undertakes to sell her life estate and not the fee (Code 1923, Section 6925; Code 1907, Section 3420; Code 1940, Title 47, Section 153; Code 1975, Section 35-4-270), and such act does not affect the rights of minor children or heirs at law" (11).

Situation No. 41.

Mr. and Mrs. Jones owned their farm as joint tenants. The deed contained a right of survivorship clause meaning that at the death

of either one, title would automatically pass to the remaining tenant. Mr. Jones had a will in which the farm was to go to his son. At Mr. Jones' death does Mrs. Jones or the son own the farm? Mrs. Jones. Mr. and Mrs. Jones were joint tenants in that they had an undivided ownership in the farm. The right of survivorship clause written in their deed stipulated that Mrs. Jones would automatically receive title to the farm at Mr. Jones' death. Joint tenancy ownership takes precedence over distribution by will. Survivorship and joint tenancy is described in *Fretwell v. Fretwell*. "Survivorship is allowed, if expressed, as an incident to the estate of tenancy in common. Each does not own the whole, while at the same time owning the half. Rather, each owns an undivided one-half interest in the property for life, plus the right to own the unencumbered whole if he survives his cotenant . . . Other courts have held that a surviving joint tenant becomes the absolute owner of the property held in joint tenancy upon the death of the cotenant, free of the claims of the heirs, because the survivor does not acquire title through the deceased but by virtue of the deed" (52). In the *Fretwell v. Fretwell* case, the property described in the joint deed with survivorship became the property of the widow.

Situation No. 42.

Mr. Jay owned 100 acres of land and died intestate or without a will. Mr. Jay was survived by his wife and one daughter, who was married. Who would inherit the land — his wife or his daughter? The daughter. A will is used as a legal means by which a person distributes his property according to his wishes after his death. If one dies without having made a will, he is said to have died intestate and state law then determines how the property is to be distributed. In Alabama, it is distributed according to Alabama "Laws of Descent and Distribution." Mr. Jay died and was survived by his wife and one daughter, leaving 100 acres of land. "The real estate of persons dying intestate, as to such estate descends, subject to the payment of debts, charges against the estate, and the widow's dower as follows: (1) To the children of the intestate, or their descendants, in equal parts" (36). The wife would inherit the real estate only if there were no surviving children, parents, brothers, or sisters of the intestate. Mr. Jay's wife would, however, receive one-third of the real estate for her lifetime use, but this land would go to the daughter at her death (see fact situation 43).

Situation No. 43.

Mr. Barnes died without children and left a will in which he had requested his farm should pass to his brother. Mr. Barnes' widow insisted since she did not have an estate of her own she was entitled to her dower right of one-half of her husband's land for her lifetime use. Is Mrs. Barnes correct? Yes. Alabama recognizes that a widow is entitled to a dower right. A dower right is that part of the deceased husband's real estate given by law to a widow for her lifetime use. In *Byars v. Mixon*, dower is explained according to the Alabama Code 1940. "Dower is defined in Title 34, Sections 40 and 41 (Sections 43-5-1 and 43-5-2): Section 40. 'Dower is an estate for the life of the widow in a certain portion of the following real estate of her husband, to which she has not relinquished her right during the marriage: (1) Of all lands of which the husband was seized in fee during the marriage. (2) Of all lands to which, at the time of his death, he had perfect equity, having paid all the purchase money therefor.' Section 41. 'The quantity of the dower interest is as follows: (1) When the husband dies leaving no lineal descendants and his estate is not insolvent, his widow is entitled to be endowed of one-half of his lands. (2) If in such case his estate is insolvent, to one-third part thereof. (3) When there are lineal descendants then to one-third part thereof, whether the estate be solvent or not' " (17). Mr. Barnes died without children (lineal descendants), so his widow would be endowed one-half of his land for her life. If Mr. Barnes had surviving children, then his widow would receive one-third of his land (as in fact situation 42) for her life. Mrs. Barnes' dower interest could have been reduced if she had owned a separate estate of her own.

Situation No. 44.

Mr. Bay had three sons, all over 19 years old, and 600 acres of land. Mr. Bay had a will drawn up so his land would be equally inherited among his sons as tenants in common. When Mr. Bay died, however, one of his sons wanted to sell the land as he had no desire to continue farming. Can this son force the other two sons to sell? Yes. One son can force the other two sons to sell because they owned the land as tenants in common, since the land could not be partitioned fairly and in agreement to all. Tenancy in common exists where the property is held by several and distinct titles by unity of possession, and each has the right to occupy the

whole in common with his cotenants. *English v. Brantley* provided the ruling for the determination of whether land could be sold for division. The Code of Alabama 1940, Title 47, Section 186, allows a cotenant to force a sale for division only after proving the property cannot be equitably divided in kind. The Code provides a reasonable means of allowing all cotenants maximum freedom in dealing with their interests in jointly owned property (51). This was amended by Act No. 79-334 (1979). The Legislature realized the possible inequities that occurred from this procedure and, by Act No. 79-334 of the 1979 Regular Session of the Alabama Legislature, provided for the purchase of the interest of the joint owners or tenants in common filing for the partition by the other joint owners or tenants in common at a price determined by a court approved appraisal of the property.

Situation No. 45.

Mr. Brown sold his farm to Mr. Jones who did not record his deed at the courthouse. Mr. Brown, being somewhat dishonest, later sold the farm to Mr. Smith, and disappeared. Mr. Smith, having no idea the land had already been sold, recorded his deed at the courthouse. Does Mr. Jones have legal title to the farm? No. In Alabama a deed does not have to be recorded in order to be valid, but, once a deed is recorded it is legally considered to give constructive notice to all people that a clear title exists. If someone obtains an interest in land and does not have constructive notice (no knowledge of a previous interest held), then all prior conveyances of the land are void.

This was declared in *Lott v. Keith* in which "Keith was an innocent purchaser for value under Title 47, Section 120, Code 1940 (Section 35-4-90), which provides: "All conveyances of real property, deeds, mortgages, deeds of trust, or instruments in the nature of mortgages, to secure any debts, are inoperative and void, as to purchasers for a valuable consideration, mortgages, and judgment creditors without notice, unless the same have been recorded before the accrual of the right of such purchasers, mortgages, or judgment creditors" (61). In the fact situation, Mr. Jones bought a farm, but did not record his deed. The same farm was later purchased by Smith who had no knowledge of Mr. Jones' interest. Mr. Jones would not have legal title to the farm because his deed would be void when Mr. Smith recorded his deed. Alabama has a "race type" recording act in which the first

one to record the deed has clear title to the land. It is imperative, therefore, for farmers to record all conveyances of land as soon as possible to ensure clear title in case of a dispute.

Land

Farmers have a majority of their assets tied up in land; therefore, it is important for farmers to know and understand the restriction placed on the ownership of land. Three fact situations, 46-48, make up the subject area of land.

Situation No. 46.

Mr. Thompson moved his trailer onto 10 acres of land owned by Mr. Knight. Mr. Thompson had no lease, nor did he pay any type of rent. For 20 years, Mr. Thompson lived on the 10 acres. Can Mr. Thompson claim title to the 10 acres? Yes. Mr. Thompson lived on the land for 20 years and used it as if he, himself owned the land. Mr. Thompson would be able to claim title through prescription. Prescription is the right to claim title under open, continuous, and exclusive use for a statutory period of time. *McKee v. Goldthwaite* stated that "the Alabama rule of prescription may be unique, but this court has uniformly followed the rule for many, many years. In *Morris v. Yancey*, this court said: 'This court had adhered with uniform tenacity to the doctrine of prescription and has repeatedly held that the lapse of 20 years without recognition of right or admission of liability, operates as an absolute rule of repose,' and, 'the elements on which the doctrine of prescription is applied differ from those of adverse possession. In the first there must be an individual, continuous possession of user, without the recognition of adverse rights, for a period of 20 years, and upon the establishment of such claim and use, the law presumes the existence of all the necessary elements of adverse possession of title without fuller proof, while under a mere title of adverse possession through the period prescribed by the statute of limitations, no such presumption prevails, and all elements must be established by him who asserts such possession or title'" (63). Thus, Mr. Thompson could claim title by prescription because he lived on the land for the Alabama statutory time period of 20 years. Mr. Thompson could not claim title under adverse possession because he did not meet all the requirements. The rules for title by adverse possession for

10 years are very specific and may be found in Section 56-5-200 of the Code.

Situation No. 47.

The state planned to construct a new state highway which would run right through Mr. White's soybean field. Mr. White refused to sell his field to the state. Could Mr. White be legally required to sell? Yes. The state has the legal power to take private property for a beneficial public use. The state could condemn Mr. White's property under their power of eminent domain. Eminent domain is an inherent power of government which exists so the government can act more efficiently in carrying out public need. There "is a fundamental principle in the law of eminent domain that private property may not be condemned unless it is to be subjected to a recognized public use, affording benefits which are not vague, indefinite, or restrictive" (54). Mr. White would be entitled to compensation for the loss of his field. Under condemnation procedures, it has been ruled that "when the government or other entity having the right of eminent domain has the damages assessed in a preliminary manner either by viewers or a jury that the only remaining right which is vested in the landowner is the right to receive just compensation and damages. The very essence of the power of eminent domain is the right of the sovereign or its agents to divest the landowner of his property and to take away from the landowner his vested rights to possess the property. On the other hand, the vested right of the landowner is to demand the payment of adequate compensation and damages" (64).

Situation No. 48.

Mr. Jones rented 50 acres of land from Mr. Smith, his landlord. Mr. Jones sold his crop to Mr. White, who knew that Mr. Jones had rented the land. When Mr. Jones' rent was due, he was unable to pay it. Could Mr. Smith collect from Mr. White? Yes. Mr. Smith, has a lien (claim) on the crops for the rent owed. Mr. Smith, as the landlord, has the right to claim Mr. Jones' crops to cover the rent due him (attachment). The landlord's lien was discussed in *Darden v. Ogle* in which the court ruled "the rent is secured by lien on the crops, this lien is paramount to, and has preference over all liens on those crops for the year which they

are grown." Code of Alabama 1940, Title 31, Section 15 (Section 35-9-30) ". . . The landlord's lien for rent and advances is made paramount by statute. It is a law-created lien accompanied with restrictions upon the possession and control of the tenant. The tenant may not, without the landlord's consent, remove the crop from the premises, nor otherwise dispose of the same, without subjecting his crops to attachment. He cannot by his mortgage pass any greater right than he has as against his landlord" (45). Mr. Smith would have control over the crop; however, he would not possess title to the crop. "The lien, however, does not give the landlord any title to, or possessory rights in, the crop grown by the tenant. This is not to say that the landlord has no interest in or control over the crop." It is not a security interest as defined by Code of Alabama 1940, Article 9, Title 7A, Section 9-104 (b) [Section 7-9-104 (b)]. Landlord liens are specifically excluded under that Code Section (47). Mr. Smith could collect a monetary sum from Mr. White if he did not choose to obtain a judicial order to take the crop into custody. In *Darden v. Ogle*, the trial court had awarded a money judgment because attachment was not sought. The court ruled that though "attachment is provided as a remedy to enforce a landlord's lien, it is not the exclusive remedy. The lien exists apart from the statutory remedy of attachment" (46).

Water Rights

Water is a valuable natural resource in which the availability of useable water is imperative for any type of farming operation. For this reason, farmers should be aware of their rights in regard to the use of water. Farmers' rights to water use vary depending upon the source of water in question (76). There are three different water sources including: (1) water course, (2) percolating water, and (3) surface water. A water course is water which flows over the surface in a well-defined channel. Percolating water is water running beneath the earth's surface without any definite channel. Surface water is water on the surface of the earth not following a defined channel. Water rights is the last subject area studied, and it contains two fact situations, 49-50.

Situation No. 49.

A stream, used primarily for irrigation purposes on his farm, flowed through Mr. Jay's land. Mr. Thompson, who lived

downstream, believed that Mr. Jay was using too much water, even though he had an adequate supply himself. Can Mr. Thompson legally force Mr. Jay to use less water? No. Mr. Thompson has the right to use the water from the stream, which is a water course, because of the "Riparian Rights Doctrine." The doctrine gives a riparian owner (owner of land containing a water course) the right to make reasonable use of the water flowing through or under his land. In the Alabama case of *Tennessee Coal, Iron South Railroad Company v. Hamilton*, the court said "that water is the common and equal property of every one through whose domain it flows, and that the right of each to its use and consumption, while passing over his possession is the same. One must so use it as not to destroy or unreasonably impair the equal rights of others" (50). The court in *Beaunit Corporation v. Alabama Power Company* said "it would apply the 'reasonable use' doctrine pursuant to which any right of plaintiff to the flow of the river past its lands is subjected to and qualified by the right of reasonable use of the rivers by other riparian owners . . ." and "because plaintiff has not proved damage to its property, which would be actionable under the laws of Alabama, it may not recover a judgment against the defendant" (10). Mr. Thompson was still receiving an adequate supply of water, therefore, he could not legally force Mr. Jay to use less water.

Situation No. 50.

Every time it rained, a small section of Mr. Bay's land was flooded by a large amount of water runoff from an upper landowner's property. If Mr. Bay lived in a rural area, could he do anything to prevent the water from running onto his land? No. As a lower landowner, Mr. Bay cannot interrupt or obstruct the water running onto his land. Rainwater is classified as surface water, and an upper landowner living in a rural area has the right to discharge surface waters from his land onto or over the property of a lower landowner. "As to lands outside a municipality, the lower land bears a servitude to the higher surface and must receive water that flows from the higher land" (15).

SUMMARY

The purpose of this study was to determine the extent of knowledge of legal rights and responsibilities possessed by

Alabama farmers. Data used in the study were collected by personal interviews with 202 randomly-selected, full-time farmers in five predominately agricultural areas. General characteristics of the farmers surveyed were obtained to present an overall picture of the personal background, general information about the farm, and the present status of the farmers.

The personal characteristics included the farmer's age and his family background. The average age of respondents was 50 years, and over half of the farmers had lived in Alabama between 41 and 50 years. Ninety-one percent were married and over half of the farmers had three or more children.

Information about the farm dealt with farm size, type ownership, enterprise combination, and gross farm income. Average farm size was 715 acres, with 62 percent of the farmers owning and renting land. Farm enterprise combinations varied; however, a combination of livestock and crops was most prevalent. Gross farm incomes were divided into nine levels in which the \$30,000-\$49,999 income level had the largest number of farmers, 37.

The present educational status of farmers was determined along with additional educational experiences; 76 percent had a high school or less educational background. Farm workshops and seminars were not frequently attended by the respondents. A majority of the farmers subscribed to farm publications, the most popular being **Progressive Farmer** and **Farm Journal**. Most were members of some type of farm association, and 136 farmers belonged to Farm Bureau and 66 were members of the Alabama Cattlemen's Association. More than half had served on a jury and had used some type of legal assistance, while 44 farmers had legal help involved with deeds and other land transactions.

Legal knowledge was analyzed and evaluated based on the responses given by the farmers as a group. Individual fact situations were studied as well as several of the characteristics of the farmers.

Five response groups were selected to represent farmers' answers for each of the individual fact situations. The five response groups included (1) right answer with right reason, (2) right answer with wrong reason, (3) wrong answer with right reason, (4) wrong answer with wrong reason, and (5) don't know. A large variation was noted for all response groups except two, "wrong answer with right reason" and "don't know." These low percentages were caused by different individual interpretations

of the questions, and the fact that most farmers tended to answer all questions with some type of response.

All of the fact situations were grouped into 13 subject area groups which covered a wide range of legal topics. Correct responses were computed for each subject area. The subject area of mineral rights was the area farmers had the most knowledge about with 83 percent answering the correct responses followed by the subject area of negligence, with 71 percent correct responses. Least knowledge was indicated in the subject areas of offers, employees, and estate planning, with correct responses of 17, 26, and 39 percent, respectively.

The different characteristics that were studied included age, farm size, gross farm income, and educational level. Little difference in knowledge was found in the age level and farm size classifications. Variation was found in the gross farm income and educational level classifications. There was a general trend of increasing averages of correct responses with increasing gross farm income levels. The education level of university educated farmers had the highest average of correct responses while those not completing high school had the lowest average.

Legal solutions to the fact situations were presented in layman terms, according to Alabama statutory case laws. Where no Alabama law existed, the general rule referring to the particular situation was stated.

CONCLUSIONS

Farmers increasingly need to be aware of their legal rights and responsibilities. If farmers can recognize potential legal dangers, then they can seek necessary legal assistance.

The 50 fact situations were grouped into 13 subject areas. The subject area of "contracts" had nine fact situations. The farmers averaged 62 percent correct answers for *contracts*, ranging from a low of 28 percent to a high of 93 percent correct. They averaged below 50 percent in only two situations thus indicating that Alabama farmers have a fairly good working knowledge of contracts.

"Offer and mistakes," which are usually part of contracts, but were separate in this study, had four fact situations. Farmers scored very low on the three fact situations for *offers*, ranging from a low of 10 percent correct to a high of only 31 percent correct. They did better on *mistakes*, scoring an average of 52

percent correct on the one fact situation used. These results indicated *offers*, an essential part of a contract, is the most misunderstood subject covered in this study. Farmers definitely need more educational work in this important area of *contracts*.

Farmers scored very well on the subject area of "*negligence*" averaging 71 percent correct answers on the two fact situations used. They scored 85 percent correct on one fact situation and 56 percent correct on the other, indicating a fairly high level of knowledge in the area of *negligence*.

The legal aspects of "*farm visitors*" were covered in seven fact situations. The farmers averaged only 55 percent correct answers, with a low of 29 percent correct and a high of 84 percent correct. They scored below 50 percent on two of the seven fact situations, indicating additional education or training is needed in this area.

"*Attractive nuisance*" was covered by only one fact situation, since this is not an area farmers are subject to incur a loss in very frequently. The farmers indicated a fair level of knowledge on this subject as indicated by the score of 57 percent correct.

"*Bailments*" were covered in two fact situations. The farmers averaged 50 percent correct, but had a wide difference with a score of only 14 percent correct on one and 85 percent correct on the other fact situation. The fact situation on which farmers scored the lowest had some contractual elements in it, thus, indicating again that farmers are not well aware of the different legal aspects of contracts.

The subject area of "*employees*" had five fact situations. The results indicated Alabama farmers are not well aware of their legal responsibilities to their employees, scoring only an average of 36 percent correct, ranging from a low of 22 percent to a high of 85 percent. The fact situation where farmers scored only 22 percent correct dealt with an aerial spray company hired by a farmer. This is getting to be a very frequent occurrence for farmers and they definitely need more knowledge of their legal responsibilities in this area.

The area of "*liability for farm animals*" was covered in eight fact situations. The farmers scored an average of 50 percent correct answers, ranging from a low of 12 percent to a high of 93 percent. Rulings in recent cases have changed farmers' liability for animals on highways and contributed to the low score of only 12 percent correct. Farmers scored only 27 percent correct on a fact situation dealing with a farmer's responsibility for maintain-

ing an adequate legal fence to prevent liability for animals on highways. One important element of these cases was scored wrong by farmers because they thought they would be liable when, based on recent case rulings, they would not be liable.

The subject "*mineral rights*" had only one fact situation and farmers scored 83 percent correct on this situation indicating adequate knowledge.

"*Estate planning*" had six fact situations and the farmers scored only 39 percent correct answers, ranging from a low of 21 percent, to a high of 65 percent correct. Farmers scored very low, 21 percent correct, on a situation dealing with rights of a widow with a lifetime interest in the farm her husband owned. They also scored only 21 percent correct on a situation dealing with who would inherit 100 acres of land where a farmer died intestate. These low scores indicate a continuing need for educational work in this important area.

The broad area of "*land*" had three fact situations. The farmers averaged 54 percent correct, with two low at 31 and 37 percent, and one high with 95 percent correct answers. They scored low on fact situations dealing with acquiring land through adverse possession and a landlord's rights in a crop produced on his land by a tenant. These are important areas and farmers need to know their legal rights in them.

The last subject area was "*water rights*." There were two fact situations used in this area and farmers scored an average of 55 percent correct. This indicated a fair level of legal knowledge on *water rights*. This subject will probably become more important in the future as more Alabama farmers use water for irrigation of crops.

This study indicates an important need on the part of all professional agricultural workers to aid farmers in becoming more aware of their legal responsibilities and rights. There is a need for lawyers to specialize in agricultural law or to become more familiar with the legal problems faced by farmers so they can more adequately assist them in estate planning and other specialized areas where they have legal needs.

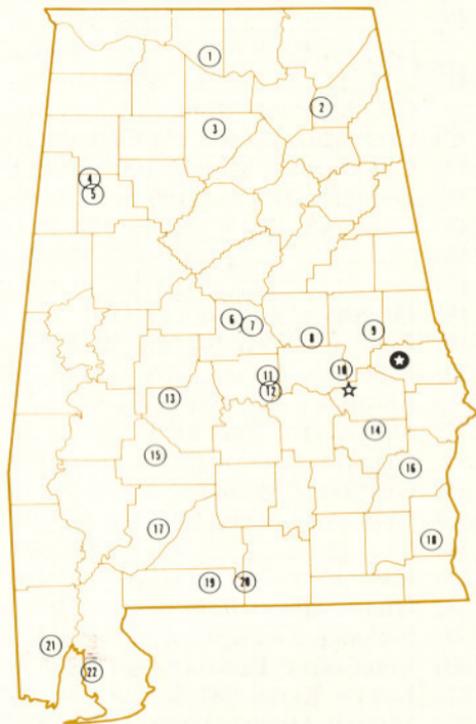
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Alabama's Agricultural Experiment Station System AUBURN UNIVERSITY

With an agricultural research unit in every major soil area, Auburn University serves the needs of field crop, livestock, forestry, and horticultural producers in each region in Alabama. Every citizen of the State has a stake in this research program, since any advantage from new and more economical ways of producing and handling farm products directly benefits the consuming public.



Research Unit Identification

- ★ Main Agricultural Experiment Station, Auburn.
- ☆ E. V. Smith Research Center, Shorter.

1. Tennessee Valley Substation, Belle Mina.
2. Sand Mountain Substation, Crossville.
3. North Alabama Horticulture Substation, Cullman.
4. Upper Coastal Plain Substation, Winfield.
5. Forestry Unit, Fayette County.
6. Foundation Seed Stocks Farm, Thorsby.
7. Chilton Area Horticulture Substation, Clanton.
8. Forestry Unit, Coosa County.
9. Piedmont Substation, Camp Hill.
10. Plant Breeding Unit, Tallassee.
11. Forestry Unit, Autauga County.
12. Prattville Experiment Field, Prattville.
13. Black Belt Substation, Marion Junction.
14. The Turnipseed-Ikenberry Place, Union Springs.
15. Lower Coastal Plain Substation, Camden.
16. Forestry Unit, Barbour County.
17. Monroeville Experiment Field, Monroeville.
18. Wiregrass Substation, Headland.
19. Brewton Experiment Field, Brewton.
20. Solon Dixon Forestry Education Center,
Covington and Escambia counties.
21. Ornamental Horticulture Field Station, Spring Hill.
22. Gulf Coast Substation, Fairhope.