Does Traceability Mean Liability?

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Bottom Line: No

- Animal identification and traceability will not, on its own, expand the liability that a producer is exposed to.
  - If practices are employed that eventually injure someone else, the producer responsible for creating that threat has always been potentially liable.

- Difference:
  - A traceability system helps identify individuals who have been part of the chain of custody
    - Increases the accountability for individuals who until now have sometimes been anonymous.
  - Additionally, a comprehensive system of traceability may identify everyone who owned the animal, but be unable to pinpoint the wrongdoer, exposing everyone along the chain to potential liability.
Theories of Liability:

- Warranty
- Products Liability (Strict Liability)
- Negligence
What is a “Warranty”?

- **Express warranty:** affirmative promises about the quality and features of the goods being sold.
- **Implied warranty:** allows buyers to purchase goods and be confident that they meet certain minimum standards.
  - UCC creates two implied warranties:
    - the warranty of "merchantability" of the goods being sold,
    - the warranty that the goods are "fit for a particular purpose."
  - Only “merchants” are held to implied warranties
    - "a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill."
Who is a “Merchant”?

- Feeders, packers, distributors?
  - Almost certain to be considered merchants

- Farmers?
  - Courts are split!
  - Factors
    - the length of time the farmer has been engaged in marketing products produced on the farm;
    - the degree of business skill demonstrated in transactions with other parties;
    - the farmer's awareness of the operation and existence of farm markets; and
    - the farmer's past experience with or knowledge of the customs and practices unique to the marketing of the product sold
Can a warranty theory lead to liability?

If you made express warranties:
- Ex: A producer enters into a contract with a buyer. The contractual language, either written or oral, includes specific warranties as to the health and marketability of the livestock.
  - Yes

If you do not make express promises, AND are a merchant:
  - Maybe!
    - Warranty of merchantability:
      - Guarantee that an item is fit for the ordinary purpose for which it is used
    - Warranty of fitness:
      - Guarantee that an item is fit for its intended use when the buyer relies upon the seller’s knowledge of the goods and the seller knows of the buyer’s intended use.
  - Are you in a state that has created exceptions to prevent liability from attaching to livestock producers?
State Exceptions to Warranties for Livestock

- Passed in about half the states
- General types of exceptions:
  - Statutes limiting or excluding warranties on livestock in general
  - Statutes limiting the warrant exception to disease
  - Statutes limit the exception to those who sold livestock without knowing they are diseased
  - Statutes limiting the exception to those animals that are not sold for immediate slaughter
  - A statute limiting the exception only to those producers who affirmatively report that the animals are free of disease
What is “Products Liability”?

- Liability imposed when one introduces a defective product into the stream of commerce.
  - Plaintiff must show that the product caused the harm
    - Defendant held to strict liability standard
- Defenses?
  - Is it a defense to be careful?
  - Is it a defense to exercise due care?
  - Is it a defense to act reasonably?
  - No: under strict liability, one can be liable even when using best management practices in good faith.
Elements of Strict Liability

- The defective condition of the defendant's product
- Causal connection between the defective condition and the plaintiff's injuries or damages
  - Usually involves proof that the product did not change substantially after it left the control of the defendant
Can products liability lead to liability?

- Depends where you’re at on the supply chain!
- Packer/retailer: Yes.
- Producers:
  - For it to happen, animals must be defined as “products”
  - The majority of courts say that animals can not be defined as products because of their mutable, changing nature
    - aka, it “changes substantially” once it leaves their hands
  - However, a few states have held that animals (household pets, specifically) are “products.”
    - NY, OR, CT
    - Torts Restatement
What is “Negligence”?

- The failure to exercise reasonable care
  - What a reasonably prudent person would do in the same or similar circumstances

- Elements:
  - Duty: Were you responsible for doing something/not doing something to a certain person?
  - Breach of Duty: Did you fail in your responsibility?
  - Harm: Did someone get hurt?
  - Causation (two part)
    - Were you the reason that someone got hurt?
    - Could you have foreseen that someone would get hurt?
Can a negligence theory lead to liability?

- Yes.
  - If a plaintiff can prove that the producer/feeder/processor failed to use reasonable care and that failure led to plaintiff’s injury, the producer/feeder/processor can be held responsible under a theory of negligence.

- Reducing Risk
  - Use/documentation of best management practices on the animals.
    - Treatment records, animal health programs, inputs, quality assurance records.
Example:
- Plaintiff contracts *E. coli* 0157:H7
- Plaintiff files suit against the retailer and packer for negligent handling of the meat
- If the packer has a traceability system in its plant, the packer may bring in the feed lot owner who fed the steer as another defendant.
- If a system-wide traceability plan is in place, the cow-calf operator & backgrounder may also be brought in.

To hold them responsible, plaintiff would have to show responsibility based on
- Warranty claims
- Products Liability (Strict Liability)
- Negligence
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