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LIVESTOCK OWNER LIABILITY

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LIVESTOCK OWNER LIABILITY IN AUTOMOBILE/LIVESTOCK COLLISIONS

A. Overview

The law regarding a livestock owner's duty to fence his livestock has a long and storied history in Texas. In the 1800s, most of the Texas population lived on farms and ranches. Motor vehicles were virtually non-existent then, and much of the land was within the public domain. During that era, Texas livestock owners were permitted to allow their livestock to roam freely across the open range. Today, the majority of the Texas population lives in urban settings. The open range is gone. Paved highways and roads are abundant and are heavily traveled by motor vehicles. As a result of these changes in our society, livestock owners no longer enjoy complete freedom of permitting their livestock to roam at large and must be mindful of their potential liability if their livestock escape and cause a motor vehicle accident.

Livestock owners today face potential criminal liability under the Agriculture Code as well as potential civil liability under the Texas case law if their livestock are involved in collisions with motor vehicles.

B. Criminal Liability Under the Agriculture Code

Beginning in the early 1900s, Texas has had statutes regarding the right of livestock owners to permit their livestock to roam at large. Statutory law has also developed that specifically prohibits livestock roaming on Texas highways. These laws are currently contained in the Texas Agriculture Code, and the violation of the laws results in a criminal penalty against the livestock owner. These laws also establish a duty for the livestock owner to fence the livestock, and this duty can give rise to a negligence cause of action in a civil case.

The Agriculture Code contains two key provisions regarding the ability of a livestock owner to allow his livestock to roam on Texas highways. The first of these regards the stock election law that applies throughout any county or area of a county that adopts it. The second of

these regards livestock roaming on state and U.S. highways, regardless of whether the county has adopted the stock election law.

1) **Stock Election Law**

The Texas Agriculture Code provides that a county or an area within a county may adopt the stock election law by a vote of the county residents. The general effect of the stock election law is that livestock owners must keep their livestock fenced in. A livestock owner who knowingly permits his livestock to run at large in an area that has adopted the stock election law is guilty of a misdemeanor offense.¹

Most counties in Texas have now adopted the stock election law. The County Clerk in each county maintains minutes regarding whether the County's Commissioner's Court has conducted an election in which the stock election law was adopted.

2) **Livestock on State or U.S. Highways**

The Texas Agriculture Code states that it is unlawful for an owner of livestock to knowingly permit the livestock to roam unattended on a United States or Texas State highway. Farm to Market roads are specifically excluded from these provisions, but these provisions apply to all United States and Texas State highways regardless of whether the area in question has adopted the stock election law. Violation of the provisions constitutes a Class C misdemeanor, which is punishable by a fine not to exceed \$500.²

3) **Analysis of Agriculture Code Provisions**

In determining the applicability of the Agriculture Code provisions, the first question to ask is whether the stock election law has been passed. If it has, then the duty to fence exists regarding all roads in that county, including farm to market roads. If the stock election law has not been passed, the Agriculture Code will still establish a duty to fence regarding the United

States and Texas State highways in the county.

4) **Actual Knowledge Required for Criminal Violation**

The livestock owner must have actual knowledge that the livestock are not fenced in to be in violation of the Agriculture Code provisions. The fact that the owner should have known that the livestock were out is insufficient to establish a violation.³ Actual knowledge is required because a criminal penalty is involved as opposed to a civil judgment. As a result, it is much more difficult for the State to establish a violation of the criminal law than it is for a claimant to establish a case of negligence against the livestock owner under the civil law.⁴

5) **Negligence Per Se Standard for Civil Negligence**

Of course, a violation of the Agriculture Code provisions can constitute negligence per se in a civil case if the violation proximately causes a collision between livestock and a motor vehicle.⁵

C. Civil Liability Under Texas Case Law

The primary issue in a civil suit for property damage and/or personal injury resulting from a motor vehicle collision with livestock is whether a duty exists that requires the livestock owner to fence the livestock.

1) **Common Law Duty to Fence**

Case law, as opposed to statutory law such as the Agriculture Code, is referred to as the common law. At one time, there were Texas cases going both ways on the issue of whether livestock owners have a common law duty to fence their livestock. The Supreme Court resolved this conflict, however, in the 1999 case of *Gibbs v. Jackson*⁶, in which it held that there is no common law duty to fence livestock. As a result, unless a duty is created by statute, there is no duty for the livestock owner to fence the livestock and therefore no liability for motor vehicle

accidents caused by livestock on the highway.⁷

Courts of Appeals in Fort Worth, Waco, Dallas, Tyler, Corpus Christi, and Amarillo⁸ have held livestock owners liable in motor vehicle/livestock accidents under the common law. The Texas Supreme Court approved a jury verdict based on common law negligence in the 1978 decision of *Beck v. Sheppard*.⁹ Most of these cases involved duties to fence created by statute, but others did not. After *Gibbs v. Jackson*, however, it is now clear that the livestock owner does not have any duty to fence his livestock unless a duty is created by statute.

2) **Gibbs v. Jackson**

Gibbs v. Jackson is a 1999 Texas Supreme Court case involving a collision between a horse and a car in Upshur County, an East Texas county that has Gilmer as its county seat. The collision took place on a Farm to Market Road, and Upshur County had not adopted a stock election law and was therefore one of the few remaining "free range" counties in the state. The Supreme Court declined to hold that there was a common law duty on the part of the livestock owner to fence the livestock. Unless there was a duty created by statute, the livestock owner had no duty and could therefore not be held liable for negligence in a civil case. Because the accident occurred in a free range county (no stock election law had been passed) on a FM Road (no statutory law creates a duty to fence on a FM Road, unlike a state or U.S. Highway), there was no duty applicable to the livestock owner and therefore no liability.

D. Summary of Applicable Law

The primary issue in a civil case regarding liability for a collision between motor vehicles and livestock is whether a duty to fence exists. If a duty is present, the issue then becomes whether the actions of the livestock owner were reasonable under the circumstances. Even though a common law duty to fence does not exist, a statutory duty sufficient to support a civil

judgment in a negligence case will be present if the accident occurred in a county that has adopted the stock election law or if the collision occurred on a state or U.S. highway, regardless of whether the stock election law has been adopted.

E. Claims Evaluation

In the context of evaluating claims based on what a reasonable livestock owner would do under the circumstances, several questions are raised. These include:

- 1) when the fence in question was constructed;
- 2) the quality of materials used to construct the fence;
- 3) the steps taken by the livestock owner to periodically inspect, repair and maintain the fence;
- 4) the steps taken by the livestock owner to monitor his livestock to ensure that none had escaped;
- 5) whether the livestock had escaped on prior occasions;
- 6) the livestock owner's actual knowledge of whether the livestock had escaped on the occasion in question; and
- 7) the steps taken by the livestock owner to capture the livestock once he became aware that the livestock had escaped.

F. Scope of Duty

Most of the cases seem to hold that, if the accident occurs on a U. S. or state highway or on an FM road in a closed range county, the applicable statute or stock election law creates a duty to fence and the livestock owner's actions will then be judged under ordinary negligence principles. Other cases seem to hold the Plaintiff to a higher burden of proof. These cases indicate that the scope of the duty is defined by the provisions of the statute or election law

creating the duty. If the statute requires actual knowledge on the part of the livestock owner to find liability, these cases require the plaintiff to show actual knowledge of the livestock being out in order for the duty to be created, not just negligence in allowing the fence to be in disrepair, etc.¹⁰

G. Who Controls Stock and Fence?

The duty to control the livestock usually rests with the owner of the animal, not the owner of the land. Many times, livestock owners will pasture their stock on land owned by others. In many of these situations, the person in control of the livestock and the fence is the owner of the livestock, not the owner of the land. In those situations, liability would rest with the livestock owner, not the land owner. If the landowner retains control of the fence and/or the livestock under the applicable lease agreement for the land, the landowner may still face liability.¹¹

H. Conclusion

The liability of a livestock owner for motor vehicle accidents caused by his livestock is an area of Texas law that is somewhat confusing and is often misunderstood. Many plaintiffs' attorneys contend that livestock owners are strictly liable for any motor vehicle collisions involving their livestock. Strict liability is not the standard.¹² However, persons representing the livestock owner in defending the suit or handling the claim must determine whether a duty exists and, if a duty does exist, must determine whether the livestock owners did what a reasonable and prudent owner would do under the circumstances.

I. Liability Flowchart

The following is a flowchart that shows the steps in the process of determining the existence of a duty, and the applicable standard if a duty exists.

What type of road is it?



U.S. or State Highway

FM Road/County Road



Duty exists per Ag Code

Has Stock Election Law been passed?



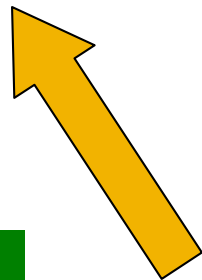
**Negligence Standard Applies:
Did Livestock Owner Act Reasonably?**

Yes

No



**No Duty exists.
No liability of Livestock Owner (Common Law)**



Endnotes

¹ Texas Agriculture Code, §§ 143.071 (election, § 143.074 (effect of election) and § 143.082 (criminal penalty).

² Texas Agriculture Code, §§ 143.101, 143.102 & 143.108; Texas Penal Code, § 12.23.

³ *Beck v. Sheppard*, 566 S.W.2d 569, 572 (Tex. 1978).

⁴ *Sheppard v. Beck*, 557 S.W.2d 578, 581 (Tex. Civ. App. -- Fort Worth 1977), rev'd on other grounds, 566 S.W.2d 569 (Tex. 1978).

⁵ *Weddle v. Hudgins*, 470 S.W.2d 218, 219 (Tex. Civ. App. -- Tyler 1971, writ ref'd n.r.e.).

⁶ *Gibbs v. Jackson*, 990 S.W.2d 745, (Tex. 1999).

⁷ *Monreal v. Hildebrand*, 2002 Tex. App. Lexis 2011 (Tex. App. -- San Antonio 2002) (holding that no duty existed on a FM road in an area with no stock election law, summary judgment therefore granted to livestock owner).

⁸ *Gray v. Davis*, 792 S.W.2d 856, 858 (Tex. App. --Fort Worth 1990, no writ); *Davis v. Massey*, 324 S.W.2d 242, 244 (Tex. Civ. App. -- Waco 1959, no writ); *Miller v. Cozart*, 394 S.W.2d 22, 24 (Tex. Civ. App. -- Dallas 1965, no writ); *Ramey v. Richardson*, 397 S.W.2d 288, 289 (Tex. Civ. App. -- Amarillo 1985, writ ref'd n.r.e.); *Keyser v. Lackey*, 523 S.W.2d 295, 297 (Tex. Civ. App. -- Corpus Christi 1975, no writ); *Weddle v. Hudgins*, 470 S.W.2d 218, 219 (Tex. Civ. App. -- Tyler 1971, writ ref'd n.r.e.).

⁹ *Beck v. Sheppard*, 566 S.W.2d 569, 573 (Tex. 1978).

¹⁰ *Palmer v. Hinders*, 2000 Tex. App. Lexis 3657 (Texas. App. -- Amarillo 2000) (duty rested on statute requiring knowledge of roaming livestock, so Plaintiffs were required to show actual knowledge by stock owner, not just negligence in allowing stock to escape).

¹¹ *Levesque v. Wilkens*, 57 S.W.3d 499 (Tex. App. -- Houston [14th Dist] 2001) (holding that the duty to fence and control the livestock generally rests with the owner of the livestock, not the owner of the land).

¹² *Straitway Transport v. Mundorf*, 6 S.W.3d 734 (Tex. App. -- Corpus Christi 1999) (duty existed for accident on interstate highway, standard imposed was ordinary negligence, not strict liability; simple form negligence question submitted to the jury).