

Don't fence me in;
 No, wait – you should really fence me in!
 Fence law and pasture leasing in Oklahoma



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Remember...

https://okstatecasnr.az1.qualtrics.com/jfe/form/SV_9nlt7t936nYL3JX

Don't fence me in...

Liability for containing livestock



Evolution of the Herd Law

- Lots of Western states started out as “open range” which meant livestock owners could graze wherever they weren’t “fenced out.”
- Oklahoma started out as open range, but county by county started to enact fencing ordinances.
- Open range in Oklahoma ended with enactment of the Oklahoma Herd Law.

The Oklahoma Herd Law

4 O.S. § 98

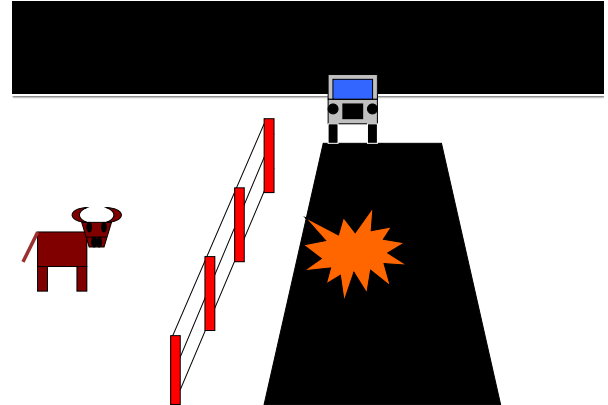
- All domestic animals shall be restrained by the owner thereof at all times and seasons of the year from running at large in the State of Oklahoma.
- Damages caused by the domestic animals trespassing upon lands of another shall be recovered in a manner provided by law (remember this, because it will get tweaked later).
- For the purpose of this act, domestic animals shall include cattle, horses, swine, sheep, goats, exotic livestock and all other animals not considered wild.
- The term "domestic animals" shall not include domestic house pets.

The classic Bovine-Automobile Interaction Scenario

- An owner of (or person who keeps) cattle, horses, sheep, or other domestic animals *has a duty to exercise ordinary care to keep them from running at large AND is responsible for all damage to property and injuries to persons that are directly caused by the domestic animals.*
- HOWEVER – an owner is not liable for damages caused by domestic animals that have escaped unless it is shown that the owner did not exercise ordinary care in confining them in a properly maintained enclosure that is generally adequate to restrain the domestic animals.

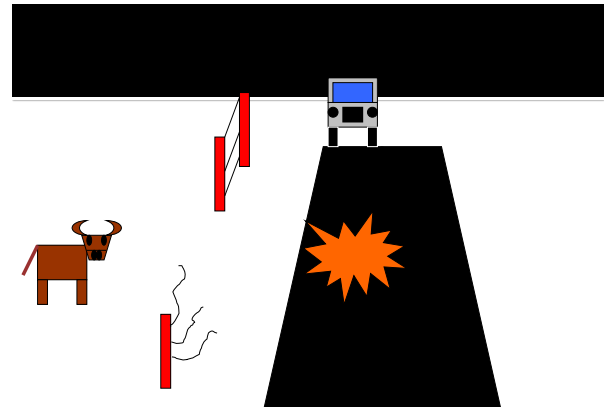
So what's "ordinary care?"

- Oklahoma Uniform Jury Instructions: Ordinary care is the care which a reasonably careful person would use under the same or similar circumstances.
- Translation: It is going to be a question of fact decided by the jury – which will go by standards prevalent in the community.
- Now, time for Crudely Drawn Animated Liability Theater...



Now, what if...

- You *knew* the livestock had a mad vertical?
- You were maintaining a livestock species that were, by nature, jumpers?
- The escapee was a hugely-valuable breeding animal, and you sue the driver for the loss of your property?



Some more questions

- What if the fence was fine, but you have livestock that are obsessed with getting out?
- Who's responsible for building and maintaining the fence?
- And what exactly is the standard for "good fence" anyway?

4 O.S. 154

- A fence made of three rails of good substantial material, or three boards not less than six (6) inches wide and three-quarters (3/4) of an inch thick, such rails or boards to be fastened in or to good substantial posts not more than ten (10) feet apart where rails are used, and not more than eight (8) feet apart where boards are used, where either wholly or in part substantially built and kept in good repair, or any other kind of fence, which, in the opinion of the fence viewers shall be equivalent thereto, shall be declared a lawful fence: Provided, that the lowest or bottom rail, wire or board shall not be more than twenty (20) or less than sixteen (16) inches from the ground, and that such fence shall be fifty-four (54) inches in height...
- except that barb wire fence may consist of three barb wires, or four wires, two of which shall be barbed, the wires to be firmly fastened to the posts not more than two (2) rods apart, with two stays between the posts, or with posts not more than one (1) rod apart without such stays, the top wire to be not less than fifty-four (54) nor more than fifty-eight (58) inches in height, and the bottom wire to be not more than twenty (20) or less than sixteen (16) inches from the ground: Provided, Further, that all partition fences may be made tight at the expense of the party desiring it, and such party may take from such fence the material by him added thereto whenever he may elect: and
- Provided, Further, that when the owner or occupants shall keep their respective share of the partition fence sufficiently tight to restrain such sheep, goats or swine

Writing your fencing agreement

1. Start with survey of property
2. Evaluate uses of adjoining property owners
3. Specify type/construction of fence
4. Allocate cost and method of construction
 - Split costs of 3rd party build
 - Labor/materials
 - "Right hand" arrangement
5. Maintenance responsibilities
6. Notice provisions
7. Emergency provisions
8. Covenant/easement?
9. How will disputes be resolved / what if they can't?
10. Recording in land records

Top 10 Things You Should Know About Pasture Leasing

1. Specify the full legal identifiers for the parties
2. Include a complete and correct legal description
3. When will the lease commence and end?
4. STOCKING RATE and how it's determined
5. Who is responsible for inputs / maintenance?
6. How will rents be calculated / when and where paid?
7. Disclose other interests (mortgage, minerals, mud, wind)
8. Partnership statement
9. Notice provisions
10. How will disputes be resolved / what if they can't?

One more time

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Questions?

