

HorseLaw

Good Fences Make Good Neighbors

by **Robert O. Dawson**
Professor of Law
University of Texas School of Law
Secretary/Treasurer, AAHS

There is a very interesting and important set of laws that every horseman should know something about: Livestock Laws. They apply to horses as well as cattle, goats, and sheep. These laws deal with taking up stray animals, returning them to the owners, and, if necessary, selling them at public auction to pay for the expenses of keeping them. They also deal with fencing obligations along highways and railroads. They resolve the question whether the owner of livestock is obligated to fence in his animals or whether others are obligated to fence them out. These laws also deal with what constitutes a legal fence under the fencing in or fencing out rules. Finally, they deal with who has responsibility for constructing and maintaining fences that are along property lines--called division or partition fences.

Here, we are considering the basic fencing requirements and what happens when they are not observed. Later installments of HorseLaw will consider other aspects of Livestock Laws.

Phase One

Livestock Owner Strictly Liable

If one goes back far enough into the law, one reaches a position taken by the law courts of England. That position was that the owner of livestock was held strictly liable for any damages to person or property done by his livestock straying onto the property of another. It made no difference why the livestock strayed or how they got off the owner's property. The fact that they strayed and damaged crops, other livestock or personal property was itself sufficient to hold the owner liable for the injuries inflicted by his animals. Livestock included cattle, sheep, goats and horses.

It is easy to see how such a legal doctrine would impede the development of the livestock industry. To be safe from possible liability, an owner would have to construct the highest and strongest possible fences and would have to post guards to make certain that gates that were opened were also securely closed. Even then, if livestock escaped, the owner was held liable despite the precautions taken.

The strict liability position was particularly unsuited for the rural areas of the United States in which

great herds of livestock wander over miles and miles of land in search of grass. In those situations, the cost of secure fencing would be prohibitive. If the livestock industry were important to a state's economy--and if livestock owners became a potent lobbying force--one could anticipate a change in that legal position.

Phase Two: Open Range Statutes

In many states of the United States, the legislatures enacted statutes to change the basic strict liability rules of the common law. The legislatures defined a "legal fence" and provided that livestock were free to wander anywhere they wished and that the owner was not responsible for damage inflicted by those livestock unless they entered land enclosed by a legal fence. In other words, the legislatures imposed on property owners the obligation to "fence out" livestock. Only if they did so with a legal fence could they claim reimbursement from livestock owners for injuries inflicted.

Along with the open range laws, in which it was anticipated that great herds of livestock would roam freely over grazing land without regard to who the title owner of the land was, there came other requirements. Livestock were required to be branded to identify them and brands were required to be registered to avoid duplication of brand or similarities in their appearance. In a topography in which a few cattle might require several square miles of pasture, and in which the terrain was frequently rocky and rugged, it made little sense for land owners to fence between themselves and their neighbors and it made much more sense to "pool" the land and let the cattle wander where they wished.

Part of the scheme defining open range was a legal fence. The definition of a legal fence varies from state to state. The statutes specify the height of the fence, the materials of which it may be constructed, how far apart fence posts may be, and how much space is permitted between strands of a wire fence. Unless a fence met the requirements of a legal fence, the property owner was not protected from marauding livestock. The property owner met his obligation to fence out livestock only by erecting and maintaining a legal fence. Thus, in the battle between the rancher and the farmer, the legislatures that enacted open range laws clearly tilted in favor of the rancher.

Phase Three: Modifying Open Range Laws

Later, as the focus of our nation shifted from farms and ranches to cities and as automobiles multiplied and high-speed highways were constructed and experienced increased use, legislatures were forced to re-think open range laws. In some states, they reversed the open range laws and required the owners of livestock to fence in their livestock. This position was similar to the common law position, only instead of strict liability for injuries inflicted by trespassing livestock, the livestock owner could be held liable only upon a showing that the livestock escaped because of his negligence.

Some states contain both "fence in" and "open range" laws. In some of these states, the fence in

requirements are imposed only on landowners whose property is adjacent to highways. In the remainder of the state, open range still prevails. In other states, parts of the state remain as open range while more urban districts contain fence-in laws. In still other states, whether open range or fence-in laws apply depend upon the results of a local-option election.

The impetus for modifying open range laws by enacting fence-in laws was not to protect farmers from ranchers' livestock, but to protect city people from ranchers' livestock, particularly city people traveling on highways.

So, in many places in the United States we have come full circle from the common law fence-in position, through the open range fence-out position, back to the common law fence-in position. There remains an important difference: under modern American law, the livestock owner obligated to fence in his animals is liable for injuries they inflict only when the owner is negligent in permitting the livestock to escape his or her property. Unlike under the common law, these owners are not held strictly liable.

Further Information

How do you find out the fence laws in your state and whether your perimeter fences are "legal fences?" The AAHS web site contains the livestock statutes from virtually every state. You can easily find and print out the livestock laws from your state.

The site also contains prior HorseLaw articles, including one on Horses and Highways that discussed the liability of a horse owner for injuries that occur when the horse gets on a highway and collides with a motor vehicle.

Finally, the AAHS web site contains law cases dealing with horse/car collisions. The results in some of those cases depend upon the type of fence that was constructed.

[Return to Top of This Page](#)

[Return to HorseLaw Page](#)