

# Farmers' Liability for Their Animals

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Acts of animals kept as pets or as part of the farm enterprise may subject the owner to legal liabilities. This guide discusses some of the situations where liability may be imposed on the farmer for acts of his animals.

The common law recognizes two general classes of animals—wild and domestic. Animals such as farm livestock that are ordinarily harmless to people are classified as domestic animals. Ownership of domestic animals carries certain legal liabilities. The following hypothetical cases will be discussed to demonstrate the nature and extent of the possible legal consequences arising from the acts of such animals.

- Your cattle break through a fence along a road and damage your neighbor's corn.
- You drive your herd back to your land by use of a public highway, and one of the animals is struck by a car.
- You discover that your herd is diseased and through your lack of care the disease spreads to your neighbor's herd.
- Your dog while off your property kills sheep belonging to someone else.
- You keep a watchdog, which attacks a salesman as he comes to call.
- Your dog, which is very friendly, jumps up to greet a visitor. The visitor is frightened and falls off the front porch.

A lawsuit can arise in any of the above situations. By studying these examples, you can learn how to protect yourself from the unpleasantness of a lawsuit. At the same time, you can become acquainted with your rights against those who fail to carry out legal duties owed to you.

This guide contains only general statements of the law based on limited sets of facts. Consult with your attorney if you are faced with a similar situation. He can get all the facts of the case and act upon them in your best interests.

## Damages Done to Neighbor's Crops

Responsibility for acts of domestic animals is determined to a large extent by the fencing laws of Missouri. Under the old "open range" system, domestic animals were free to roam at will. If a farmer wanted to grow crops or make some other use of his land, it was his responsibility to *fence out* domestic animals. If he failed to do so, and subsequently suffered a loss, there was no liability on the part of the animal owners.

This "open range" system continued to be the law in some parts of Missouri until Jan. 1, 1969. At that time, the General Assembly declared the "open range" system to be at an end and made Missouri a "closed range" state. Under this system, which is the current law, the owner must *fence in* or restrain his animals on his own land. Failure to fence in or restrain animals can lead to owner liability for the damages caused by wandering animals.

Whether or not you are liable to your neighbor for damages caused by your animals depends on *where* and *how* your animals entered his property. The Missouri law recognizes two classes of fences—exterior fences and division fences. An exterior fence refers to any fence other than one located on the boundary line between two adjacent landowners. For example, a fence along a road is an exterior fence. A fence between two adjacent landowners is a "division" fence.

If your animals cross one or more exterior fences, as in the first example, you are liable for all damages which the animals cause. This is true because under the "closed range" system the owner of the animals has the duty to *fence in* his animals.

If your animals cross a division fence and damage your adjoining neighbor's property, the liability for damage depends on whether you or your neighbor is legally obligated to "keep up" the fence at the point crossed by the animals. If it is your responsibility to keep this portion of the fence in good repair, you are liable for the damage done by your animals. However, if your neighbor is obligated to keep up the fence at the point where the animals got out, he must bear the damage inflicted by your animals.

The responsibility for keeping a specific portion of a division fence in good repair ordinarily is established by an agreement between you and your neighbor. The agreement may be either oral or written, but the latter is preferable, as it is significantly easier to prove the actual substance of your agreement.

Not only is it good advice to have the fence maintenance agreement in writing, but it is also advisable to have the agreement made a matter of public record by recording it in the county recorder's office. In the absence of an agreement, it usually is said that you must keep up that half of the division fence that lies to your right when facing the fence and standing in the middle of the fence row.

Suppose that your neighbor's livestock have trespassed on your land. What can you do with these animals? You have several alternatives, but in no case do you have the right to kill the animals merely because they have trespassed on your land.

First, you can drive the cattle off your land in a reasonable manner. They can be driven in any direction unless they came onto the land through your fault, such as failure to maintain your part of a division fence. In that case, you must drive them back in the direction from which they came. If you drive the animals farther than is necessary to protect your land and thereby injure the animals, you are liable for such injuries.

Another action you may take is to impound the animals, holding them until you are paid for the damages they caused. To have the legal right to impound the animals, you must possess the land or be an agent of the person in possession. The animals must be domestic and must be captured in the act of doing damage or under circumstances that show they had done damage recently.

Only a small amount of damage is needed to justify impounding, but the impounder must use ordinary care in keeping the animals and can make no use of the animals except to preserve them. For example, it would probably be permissible to milk dairy cows but not to use a horse for chores.

The owner of impounded cattle may get his animals back by paying the amount of the damages inflicted. If the owner and the impounder cannot agree on the amount of damage, Missouri statutes provide for judicial action to resolve the dispute.

## Animals on the Highway

Generally, animals are on the highway either because they strayed from confinement or because they were being driven along or across the highway. Several variations can arise in this context.

If you are negligent in maintaining your fences and allow your animals to escape onto the highway, your liability exposure is increased. You can be liable to motorists using the highway for damages that occur when they collide with such animals, provided the driver himself was not negligent. You are also liable if the fences are in good repair, but you keep animals you know are capable of jumping or breaking out of the fence you maintain.

Liability is also possible when fences are adequate and in good repair and the animals, not being known to be capable of breaking out, do escape. If the owner knows the animals have escaped and fails to remove the animals from the highway within a reasonable period of time, he must respond in damages to those on the highway who are harmed. Again the theory behind your liability is negligence—failing to drive the animals off the highway under circumstances when an ordinarily reasonable and prudent man could have foreseen a risk of injury to motorists or to others.

If cattle escape and cause damage but the owner is not negligent, Missouri law may still impose liability upon him. In some states, courts require the owner to be at fault before being held liable. Other states impose liability for damage caused by animals regardless of the innocence of the owner.

Missouri appears to be somewhere between these two extremes. Missouri courts have said that if animals stray onto a highway and are involved in an accident, the law *presumes* negligence on the part of the owner of the animals. To avoid liability in such a situation, the owner must prove that he was not negligent or that the driver of the motor vehicle was himself negligent, and that this negligence on the part of the driver was a contributing cause of the accident.

In the second example in the introduction, the animals were not strays but rather were being driven along the highway. In this situation, and all others where negligence is the issue, the law says the owner of the cattle must use that degree of care which would be exercised by the ordinarily reasonable and prudent man under the same or similar

circumstances. More simply stated, he must avoid creating an unreasonable risk of harm to others.

Thus, in the example, the owner must use that degree of care necessary to enable him to control the herd when driving them along the highway. Various conditions can raise or lower the degree of care that is required. Is it daylight or at night? Is visibility good or poor? Is the traffic light or heavy? In some situations, very little danger is involved; in others, one might be negligent in having a herd on the road no matter how much care was used. The best advice is to “size up” the situation, and use good judgment in deciding when and where you drive your cattle and in what methods you use to warn approaching motorists.

Animals generally are allowed to be driven along roads except where local ordinances forbid the practice. This privilege generally carries an immunity for casual trespass on private land along the highway. However this immunity applies only to property alongside the road and not to property damaged by animals straying from the road. Once the animals stray from the road, the animal owner is liable for negligence in failing to pursue them promptly and herd them back on the road.

## Permitting a Communicable Disease to Spread

The third example presents the problem of animals spreading communicable disease. The owner of animals suffering from a communicable disease, who has knowledge of their condition, has the duty to use reasonable care to prevent them from transmitting the disease to other animals or to human beings. If, by reason of the owner's negligence, they are permitted to communicate the disease, he is liable for the resulting damage.

One also may incur liability by renting out land which has become infected through use by diseased livestock if reasonable care has not been used to discover and correct the condition. Reasonable care must also be used in disposing of infected food and litter.

Liability for a rabid dog is outlined specifically under Missouri law. The owner of a rabid dog or the owner of another dog that has fought with or been exposed substantially to a rabid dog must either kill it, impound it or have it immunized. Failure to do so is a misdemeanor and is punishable by a fine of not less than \$100 nor more than \$500. He is also liable for damage caused to others by failing to take one of the above steps.

Missouri has laws which regulate the disposal of dead animals. These laws apply whether death was by disease, accident or natural causes. The law requires every person owning or caring for an animal which has died to dispose of the carcass within 24 hours after learning of the death.

An owner may dispose of the dead animal himself or call on a person licensed by the state to dispose of or transport dead animals. The owner may dispose of the carcass by burying it so that no part of the animal is less than four feet below ground level.

Missouri law prohibits the disposal of a dead animal by burning, cooking or any method other than burial, except at a licensed disposal plant. The purpose of this law is to regulate commercial rendering plants. The law does not prohibit the owner from disposing of the carcass in any reasonable manner *outside* the city limits of any municipality. While Missouri law permits substantial latitude in the manner of disposal, an owner residing outside city limits should always insure that the method of disposal he chooses does not create a nuisance.

Certain situations concerning dead animals are exempted from the coverage of the laws regulating the disposal of dead animals. Some of these exempted situations are: animals killed solely for human consumption; persons transporting or

dealing in hides and skins; and dead fowls, birds, fish, reptiles or small animals such as dogs, cats and small game.

## Injuries Caused by Dogs

The last three examples cited in the introduction concern dogs. Dogs, of course, are not the only animals which may cause physical injuries to others for which the owner must respond in damages. For the most part, however, the law is more precise with regard to dogs because more court cases have involved injuries caused by dogs. However, except where noted, the concepts discussed and applied here to dogs could apply equally well to cattle, horses, sheep, fowl or other domestic animals.

Dogs occupy a rather unique position in the law. Their legal status is placed somewhere between wild animals and domestic animals. They are looked upon as somewhat more dangerous than other domestic animals. Therefore, one is more likely to be held liable for the injuries they inflict. On the other hand, dogs are not presumed to do damage by their trespasses as are other domestic animals, and, therefore, cannot be impounded and held for damages (unless they actually are causing or have caused substantial damage to the property of the impounder).

A dog caught in the act of killing sheep, or under circumstances showing that he recently had done so, may be shot on sight unless the dog is on the premises of his owner. The justification for this rule is that the owner of the sheep is entitled to protect himself from similar damage in the future. This is the situation given in the fourth example in the introduction.

The key elements in the area of personal injuries inflicted by animals are (1) a vicious propensity on the part of the animals and (2) the owner's knowledge of such a vicious propensity. A vicious propensity is a tendency of an animal to do any act which might endanger the person or property of another in a given situation. Knowledge of a vicious propensity and failure to restrain the animal properly, in light of that knowledge, renders the owner liable for the damages caused by such animal.

Where the animal has strayed from the owner's premises to the property of another, the "knowledge" element appears to be a less stringent requirement in holding the dog's owner liable. The reasoning seems to be that the animal has gone to a place where it has no right to be, and the owner has thereby violated his duty to restrain it. Therefore, the owner should pay for any damage caused because of his failure to restrain his dog.

The "knowledge" requirement raises another legal difference between wild and domestic animals. With respect to a wild animal, the owner usually is presumed to have knowledge of the vicious and dangerous characteristics of the animal. However, in the case of a domestic animal, there is no such presumption. The owner is liable for a domestic animal's actions only if (1) the animal had actually been vicious or had a tendency to injure persons through its prior actions and (2) the owner had knowledge of these tendencies and inclinations.

The owner of an animal with vicious propensities has a duty to either kill it or restrain it so that it may not do the harm that its vicious nature threatens. If he keeps such an animal with knowledge of its inclination to do harm, the owner does so at his own risk. The early law said that liability for injuries inflicted by animals was based on negligence. Now, however, the basis of such actions is not negligence in the manner of keeping the animal, but the fact that it is kept at all.

Early law also held that before a dog needed to be restrained "he was entitled to his first bite"; that is, the dog actually had to injure someone before the owner was required to exercise caution in keeping him. The law of Missouri has

changed since that time, and this "first bite" rule is *no longer* the law.

If a dog has a menacing disposition and snarls at people, the owner probably has a duty to restrain him because he has a vicious propensity—a tendency to harm. A dog who has bitten someone only after being teased or otherwise treated with cruelty would probably not need to be restrained by the owner. Here again, you must use that degree of care which would be exercised by an ordinarily reasonable and prudent man under the same or similar conditions.

Example five given in the introduction is the situation in which a watchdog bites a visiting salesman. At the outset, we must agree that a dog is used as a watchdog *because* of his vicious propensities. The dog is used as a watchdog because of the possible harm (or at least threat of harm) he may do an intruder.

As a general rule, the right to keep a dog for protection shields the owner from liability to one who incautiously enters his premises at night, even though he enters for a lawful purpose. If, however, the owner permits that same dog to be at large on the premises during the daytime and a person is injured by it, the owner is liable, even though the injured person is at the time a trespasser.

In the example, if the salesman is a trespasser you may require him to leave and use reasonable force in so doing. However, if he is on the premises for a lawful purpose and the watchdog creates an unreasonable risk of harm to him, the owner may be liable if the salesman is injured by the dog.

The last example shows how broadly the law defines a vicious propensity. We usually think of a vicious animal as being fierce, savage, dangerous or untamed. But in determining one's legal liability we must look to legal definitions.

Legally, an animal is vicious or has vicious propensities if it tends to do any act that might endanger the person or property of others in a given situation. Therefore, if one knows that his dog is friendly and tends to jump up to greet people, he has sufficient knowledge of the vicious propensities of the dog and is liable for injuries caused by such behavior. Thus, legally, even an overly friendly dog may be looked upon as vicious.

## Summary

Animals are divided into two classes—wild and domestic. As a general rule, you have no duty to restrain wild animals still in their natural environment. However, you must restrain or confine your domestic animals in such a manner as not to create an unreasonable risk of harm to others.

When the law places a duty of reasonable care upon you, those who may be injured by your animals must also exercise reasonable care for their own safety. If they fail to exercise this degree of care, you may use this as a defense if they should sue you for their injuries.

However, if the law places an absolute duty on you to protect others from injury, the fact that the injured party failed to exercise reasonable care cannot be used by you as a defense to escape liability. Thus, the magnitude of your legal duty may have a significant effect on the outcome of a lawsuit.

Under present Missouri law, there is no longer any open range; you must now fence in your domestic animals. If they escape through your lack of care, you are liable for the damages they inflict. If the animals of another invade your property, you may drive them off your property if you do so in a reasonable manner. If they do damage, you may impound them, holding them until the owner pays for the damage.

In driving animals along or across a public highway you must use reasonable care to avoid harm to motorists and others on the highway. You should plan such operations carefully, taking all circumstances into account. The use of

warning devices will put motorists on notice of the danger and may reduce the risk of liability.

The owner of diseased animals must use reasonable care to avoid the spread of that disease. He also can incur liability by renting infected premises or by carelessly disposing of infected feed and litter. Rabid dogs, or dogs exposed to rabies, must be killed, impounded or immunized. Dead animals must be disposed of according to the rules which the law prescribes; they must not be allowed to create a nuisance.

The owner of an animal who knows of the vicious propensity or tendency of the animal to do harm is under a duty to kill it or restrain it in such a way that it cannot cause the harm threatened. Failure to do so makes the owner liable for resulting damages. It should be remembered that the term "vicious propensity" is defined quite broadly by the law.

## Other Information

The material contained here is only a general statement of law. Therefore, if you have specific questions, you should discuss them with your attorney. This guide discusses liability only with regard to animals. For your liability with regard to damages inflicted by or injuries suffered by employees, see UMC Guide 451. For your liability with regard to injuries suffered by "visitors" who come into your farm, see UMC Guide 452. Disposal of dead animals is discussed more fully in UMC Guide 2900. Fencing and boundary laws are covered in UMC Guide 810, and stockmen's liability under Missouri nuisance law is discussed in UMC Guide 851.

The above publications are available at your nearest University of Missouri Extension center.