

# Master Marketer Newsletter

<http://mastermarketer.tamu.edu>

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## Master Marketer Highlights

### Master Marketer Seminar Series

The 2021 Master Marketer Seminar Series is just around the corner and coming to you through the Zoom online platform. Based in Amarillo, Mark Welch and Justin Benavidez will be leading the six-session program held every Wednesday, January 27 – March 3, 2021.

The Master Marketer Seminar Series will consist of two-hour sessions focused on intensive marketing and risk management education for opportunities enabling Texas producers the possibility to improve their bottom line. Sessions are taught at a highly applied level while combining creative teaching and learning concepts to get successful results. Sessions are taught by some of the best speakers concerning topics involving weather, crop insurance strategies, financial management, futures markets, technical analysis, marketing plans, legal issues, and grain, cotton, and livestock fundamentals.

The required no-cost registration is available at <https://agriliferegister.tamu.edu/MasterMarketer>

More information can be found online at <http://mastermarketer.tamu.edu> or by contacting Mark Welch at (806) 683-9981 and Justin Benavidez at (979) 219-5287.

### A Year of Thanks

In keeping spirit with the holiday season and being thankful for the many opportunities we have been provided, Master Marketer would like to give a "Texas-Sized" Thank You to their 2020 and 2021 sponsors. With their support, we have been able to adapt programs in the midst of an ever-daunting pandemic to bring you the latest in market news and provide up-to-date trends while using current data and connecting professionals throughout the field.

We could not have had this successful run without the continued support from our sponsors. Along with Texas A&M AgriLife Extension Service, funded grants have been provided by USDA-Southern Risk Management Education Center, Texas Farm Bureau, Cotton Inc.-Texas State Support Committee, Texas Wheat Producers Board, Texas Grain Sorghum Producers Board, and Capital Farm Credit.

## Online Course Highlight

### Texas Agriculture Law

The National award-winning Rancher's Leasing Workshop is also available online for Texas landowners and lessees to learn the legal and economic issues related to Texas ranchlands. Focusing specifically on grazing, hunting, and livestock leases, Tiffany Dowell Lashmet, JD and Dr. Greg Kaase teach about the basics of a written agricultural lease agreement, lease arrangements and payment structures, terminating a lease, resources for choosing a lease rate, limitations to include in a lease, terms relating to mineral estates, and liability coverage and insurance. Cost of the online course is \$75 and is available at

<https://agrilifelearn.tamu.edu/product?catalog=AGEC-002>

Over the 1200+ attendees that have attended this workshop live, 100% said they would recommend it to friends. Comments from attendees include:

"Excellent presentation. These programs have saved me 100's of hours in time in research and \$1,000's in potential costs."

"Great presentation and knowledge of subject by Tiffany Lashmet and Dr. Kaase! Well done. Informative and practical mastery of subject. Very useful for us lay people."

"This was an absolutely terrific workshop! Presenters were top notch, with tons of real-world experiences. Very knowledgeable!"



## 2020 Agricultural Law Year in Review - Texas

**Tiffany Dowell Lashmet, J.D.**

Associate Professor and Extension Economist,  
Department of Agricultural Economics,  
Texas A&M University

Every year, Tiffany Dowell Lashmet, JD, highlights the biggest legal stories to hit the Texas courts in her Texas Agriculture Law Blog found at <https://agrillife.org/texasaglaw/home> 2020 has proven to beat all odds, so it should come as no surprise to see so many legal issues come to surface during these last twelve months. While this is only a brief overview of her recent post, "2020 Agricultural Law Year in Review – Texas", the details and standings of these cases and more can be found in the full article at <https://agrillife.org/texasaglaw/2020/12/28/2020-agricultural-law-year-in-review-texas>

### TX Supreme Court Addresses Fence Law Standard in Pruski v. Garcia

This case arose in Wilson County when a bull escaped and was hit on a state highway. The bull was in a pasture with a gate that was latched, but was not locked, although a lock was present on the gate. The bull's owner had only had cattle out one time before—approximately 8 years earlier. He was not aware that his bull escaped prior to the accident.

Wilson County has a local stock law applicable to cattle that provides an animal owner may not "permit" an animal to run at large in the county. Under Texas law, an animal owner may not "knowingly permit" an animal to run at large on a State or US highway. And so, the question arose—which of these two standards applied? The plaintiff argued the lower "permit" standard was applicable, while the bull owner argued it was the more stringent "knowingly permit" standard.

The Texas Supreme Court sided with the bull owner, making clear that in a situation where a collision with an animal occurs on a US or State Highway in a county with a stock law, a plaintiff will be required to prove that the livestock owner "knowingly permitted" the animal to run at large in order for the owner to be held liable. Based on the facts of this case, the court held that the plaintiff failed to prove that the bull owner "knowingly permitted" the bull to run at large and, therefore, dismissed all charges.

### TX Supreme Court Reverses Lower Court Rulings for Landowner in SWEPCO v. Lynch Easement Width Case

This case involved a landowner of property encumbered by a blanket easement signed in 1949 allowing the utility company to build an electric transmission line across the property. The line was erected in 1949 and since that time, the company used 30' total width. In 2014, the utility company began to rebuild and modernize the lines and offered landowners \$1000 in exchange for supplementing the existing easement with an express width of 100 feet. The plaintiffs in this case refused the \$1,000 offer and contended the company's use should be limited to the historically used 30'. Both the trial court and court of appeals sided with the landowners. The utility company appealed.

The Texas Supreme Court reversed. The Justices said they would not write a limitation into the parties' agreement that was not included. "We see no reason to disturb this Court's long-standing treatment of general easements in Texas. The starting point of any exercise in easement construction is the same as for contract interpretation: the easement's plain language. If the easement's terms are ascertainable and can be given legal effect, courts will not supplant the easement's express terms with additional terms nor consult extrinsic evidence to discern the easement's meaning. Parties who enter into easements are certainly capable of writing a fixed width into the easement. That is their prerogative. But as the prior cases demonstrate, sometimes parties to an easement account for anticipated developments in technology and demand by not fixing an easement's width. The use of a general easement without a fixed width is a strategic decision that does not render an easement ambiguous or require a court to supply the missing term."

### TX Supreme Court Rules Farm Animal Liability Act Inapplicable to Injured Ranchers & Ranch Hands in Waak v. Zuniga

Mr. Zuniga was killed by a bull while working as a ranch hand for the Waak cattle ranch. His family filed a wrongful death suit against the ranch owners. In response, the ranch owners raised the Texas Farm Animal

## FARM Assistance Update

**Steven Klose,**

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Liability Act (FALA) as a defense whereas that a person is not liable for injuries during a farm animal activity if those injuries are caused by an inherent risk of the activity. The trial court dismissed the case, finding the FALA did apply. The Court of Appeals held that the FALA was inapplicable due to Mr. Zuniga's status as an employee.

The Texas Supreme Court, in a surprising opinion, held that the FALA does not apply in situations where the injured party is a rancher or ranch hand. Instead, the Court found that the protections of the FALA are confined to "shows, rides, exhibitions, competitions, and the like." Thus, the FALA was not a valid defense for the Waaks, and the case was remanded for trial on the issue of wrongful death.

Two Justices issued a strong dissent in the case, beginning with the following language: "As the Court reads the Farm Animal Liability Act, 'any person' means only some people. 'Farm animal activities' are not covered if they take place on ranches. And not just anybody who engaged in a 'farm animal activity' is a 'person who engages in the activity.' Who decides whether these limitations exist and how far they extend? Not the Legislature, which did not include any of them in the Act's text. Instead, courts will decide when the statute's words mean exactly what they say and when they mean something else. The unfortunate result is that people cannot simply read the Act—and others similarly drafted—and know what it means based on grammar and sentence structure. They must wait to see what the courts make of it."

### First District Court of Appeals in Houston Sides with Landowner in Hlavinka v. HSC Pipeline Partnership Pipeline Condemnation Appeal

In this case, the Hlavinkas own property that they purchased years ago with the primary purpose of generating income by acquiring additional pipeline easements. HSC Pipeline Partnership (HSC) sought to obtain a 30-foot wide pipeline easement across the Hlavinka property. When the parties were unable to reach an agreement on the easement terms, the Hlavinkas filed suit challenging HSC's eminent domain power. The trial court ruled in favor of HSC on that issue, and at trial for compensation, excluded the testimony of Terry Hlavinka related to comparable private pipeline easement sales on his property. The Hlavinkas appealed.

The First District Court of Appeals in Houston reversed. First, the court held that HSC did not conclusively establish its "common carrier" status to  
(Continued on Page 4)

What Lies Ahead? Had we asked that question a year ago, certainly no one saw 2020 coming. We're here to talk about farm management issues, but personal challenges and losses all on a backdrop of social and political turmoil have made for quite the roller coaster. In agriculture, we saw the markets crash with economic shutdowns followed by a strong & steady rally through the end of the year. So where do we go from here?

If I could tell the future, I'd surely be doing it (socially distanced) on a beach somewhere in the Caribbean. Though the future is uncertain, we are not left completely without signals and outlooks. Like driving in a dense fog, the road ahead is obscure and blurry at best, at worst the picture is void of anything not immediately in front of you. How do we react to driving in the fog? Do we ignore the road ahead because there's nothing to see? Of course not, instead the uncertainty causes us to focus and look more intently down the road. Knowing you have little reaction time, you hope to see as soon as possible any danger or curve ahead, and you study what's coming as it grows clearer.

Strategic planning for your farm or ranch operation is not much different. You make plans for cost of production, expected yields, and price outlook even though those things can't be known ahead of time. You make long term plans, such as investment in equipment or land, based on the future you expect but do not know for certain. Because each day new information may change your picture of the future, planning your operation's future both short and long term is an ongoing process.

The FARM Assistance program is uniquely designed to help you evaluate your individual operation, financial outlook, and compare alternative plans to handle whatever the future may hold. Successful farm and ranch managers are constantly evaluating and preparing for the future. If it has been a while since you conducted an analysis with us, there is no doubt much has changed and the road ahead will be a challenge. Contact FARM Assistance toll free 877-TAMRISK & online <https://farmassistance.tamu.edu>

# TEXAS A&M AGRI LIFE EXTENSION

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please contact Emmy Kiphen at [emmykiphen@tamu.edu](mailto:emmykiphen@tamu.edu)  
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An archive of newsletters can be found online by visiting  
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## **Lashmet, Continued from Page 3**

qualify to utilize eminent domain. Thus, it reversed the trial court's summary judgment on this issue and remanded the case for trial. Second, the court addressed an important evidentiary issue—can Mr. Hlavinka, as a lay person, offer testimony regarding other private pipeline sales on the property and the fact that the highest and best use of the property was not agricultural use, but use for pipeline developments? The court answered in the affirmative, holding that his testimony was wrongfully excluded by the trial court. Both parties have filed a petition for review with the Texas Supreme Court.

## Hemp Production Legal in Texas

Hemp production is now legal in the state of Texas. In March, the Texas Department of Agriculture adopted its hemp regulations, officially allowing for legal hemp production in the state of Texas. The regulations are lengthy and impose a number of requirements on producers including obtaining correct permits, transport manifests, mandatory THC testing, and destruction of plants exceeding the legal THC threshold.