TEXAS FENCE LAW AND LIABILITY FOR LIVESTOCK ON THE ROAD

Presented by:
TONY MALLEY, *Beaumont*
Malley Law Firm

Written by:
TIFFANY D. LASHMET, *Amarillo*
Texas A&M, AgriLife Extension

LAUREN THOMAS, *Fort Worth*
Texas A&M University School of Law

State Bar of Texas
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TONY MALLEY

Tony Malley is Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization. He is also board certified in Civil Trial Law by the National Board of Trial Advocacy. He is a member of the Million Dollar Advocates Forum and a chosen Texas Super Lawyer every year since 2013.

Born and raised in Beaumont, Texas, Tony received his B.B.A in finance from the University of Texas and his J.D. from South Texas College of Law. He worked as a judicial clerk in the Eastern District of Texas. Tony began as an associate for Brent Coon & Associates, P.C. on a mass tort docket. He moved to Moore Landrey, L.L.P. where he tried a myriad of cases from personal injury to DTPA to breach of contract. He became a partner in 2008 and continued to handle product cases and personal injury. Tony formed Malley Law Firm, P.L.L.C. in 2013 and is currently maintaining offices in Beaumont and Houston. His practice includes personal injury, products liability, and commercial litigation all over Texas and the firm represents claimants beyond the state in product claims.

Tony has won successful verdicts for his clients with traumatic brain injury, severe back and neck injuries and death all over Texas. He has negotiated million dollar settlements with insurance companies and large corporations. Tony has litigated product liability cases involving toxic torts, medical devices, helmets, air bags, and watercraft. He has handled every conceivable type of premise claim at a chemical plant, refinery, on a pipeline, in a building, on a ranch and at home, whether the claim be filed by an employee, a contractor, an invitee, a licensee, and a trespasser. He has represented injured workers bringing claims under the Jones Act and FELA.

TIFFANY DOWELL LASHMET
Texas A&M AgriLife Extension
6500 Amarillo Blvd. West
Amarillo, TX 79106
(806) 677-5681
tdowell@tamu.edu

BIOGRAPHICAL INFORMATION

Tiffany Dowell Lashmet is an Assistant Professor & Extension Specialist in Agricultural Law with Texas A&M AgriLife Extension. Lashmet focuses her work on legal issues impacting farmers and ranchers, including water law, oil and gas law, eminent domain, right to farm litigation, leasing, farm protection statutes, and landowner liability. She manages the Texas Agriculture Law Blog and is the host of the Ag Law in the Field Podcast, both of which have been named to the American Bar Association Top 100 Web Resources.

Prior to joining Texas A&M in 2013, Lashmet was in private practice at a civil litigation firm in Albuquerque, New Mexico.

Lashmet grew up on her family's farm and ranch in northeastern New Mexico. She attended Oklahoma State University, graduating *summa cum laude* with a Bachelor of Science in Agribusiness Farm and Ranch Management. She then attended the University of New Mexico School of Law where she graduated *summa cum laude* and first in her class with her Juris Doctorate. She is licensed to practice in New Mexico and Texas.

LAUREN THOMAS
Texas A&M University School of Law
1515 Commerce Street
Fort Worth, Texas 76102
(210)-326-2005
Laurenthomas4@tamu.edu

BIOGRAPHICAL INFORMATION

Lauren Thomas will graduate from Texas A&M University School of Law in May 2019 with a Juris Doctorate and a concentration in environmental law and in domestic public policy. Thomas is currently a Fellow for the National Agricultural Law Center and a research assistant for Professor Gabriel Eckstein, where she is researching groundwater law in the United States. While attending law school, Thomas clerked with litigation teams at the Environment and Natural Resources Division of the United States Department of Justice, Lloyd Gosselink Rochelle & Townsend, and Valero.

Thomas attended Texas A&M University in College Station, Texas, where she graduated *cum laude* with a Bachelor of Science in Environmental Studies from the College of Geosciences.

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TEXAS FENCE LAW AND LIABILITY FOR LIVESTOCK ON THE ROAD

I. INTRODUCTION

Fence law is a topic of frequent interest and confusion for landowners in Texas. Much of what may seem intuitive or "the way it should be" may not actually be how the law is written. This article seeks to address several major issues related to Texas fence law. Section II will discuss the difference between open range and closed range and how this applies in Texas. Section III will address liability for collisions between vehicles and livestock on the road. Section IV outlines the applicable laws when animals owned by one person stray onto the property of another. Section V considers key concepts related to the building, replacing, and maintaining fences. Finally, Sections VI and VII offer a conclusion and information about additional fence law resources.

In addition to this article, attorneys seeking information to share with clients may be interested in obtaining a copy of *Five Strands: A Landowners' Guide to Fence Law in Texas*. This handbook, which I co-authored with Texas attorneys Jim Bradbury and Kyle Weldon, was written for landowners in an attempt to answer frequently asked questions related to fence law. Details for where to obtain a copy are included in Section VII below.

II. OPEN RANGE VERSUS CLOSED RANGE.

The threshold question for any fence law issue in Texas is to determine whether the area involved is open range or closed range. The answer to this inquiry will guide the resolution of most legal issues related to fences.

A. Open Range

When a location is "open range," this means that the owner of livestock has no legal obligation to prevent his or her animals from running at large. This is also sometimes referred to as a "fence out" area, as it is the obligation of a neighboring landowner to fence the animals out of his or her property, not the duty of the livestock owner to fence his or her animals in. As described by the Texas Supreme Court, "it is the right of every owner of domestic animals in this state…to allow them to run at large."[i]

B. Closed Range

In a "closed range" area, a livestock owner does have a legal obligation, referred to as a duty, to prevent his or her animals from running at large. This would be deemed a "fence in" area, as the obligation to fence rests with the livestock owner.

In a closed range area, there are different levels of duty that may apply for a livestock owner. For example, certain closed range areas may require that a livestock owner not "knowingly permit" his or her animals from running at large, while other areas may require a less exacting standard, imposing a duty that the livestock owner may not "permit" an animal to run at large.[ii] For any closed range area, it is important to determine the exact duty imposed upon a livestock owner.

C. Which Is Texas?

The default rule in Texas is that the state is open range, meaning that absent an exception discussed below, land in Texas is considered open range.

However, two exceptions to the open range rule actually make the majority of Texas closed range. Those exceptions, found in Texas statute, are the State and U.S. Highway Exception and Local Stock Laws.

1. State and U.S. Highways Exception.

The Texas Agriculture Code modifies the status of land abutting a U.S. or state highway by deeming the land closed range.[iii] Specifically, the statute provides that the owner or person in control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not "knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway."[iv] The term "highway" is defined to mean a U.S. highway or state highway in Texas, but not to include numbered farm-to-market roads.[v] A violation of this statute can result in civil liability for the livestock owner, as discussed below, but can also result in a criminal penalty, as the violation of this statute constitutes a Class C misdemeanor.[vi]

What expressly satisfies whether a livestock owner "knowingly permits" his or her animals to run at large has been the subject of several court opinions. Courts have described a person "knowingly permitting" as someone who "has or shows an awareness or understanding," acts "deliberately," or "consciously."[vii] Further, "knowingly permit" requires actual knowledge; it is not sufficient that a livestock owner should have known, or that a prudent livestock owner would have known.[viii] This requires a very fact-specific analysis, and common considerations by courts include the number of times the animals have been out before, how long the animals were out, the condition and quality of fences, and whether gates had been left open. Examples of how this standard has been applied to actual situations will be discussed below.

2. Local Stock Laws.

The second major exception to the general rule of open range is that the Agriculture Code allows counties to hold local elections to deem all or a portion of the county closed range.[ix]

a. Local stock law elections.

Essentially, Texas statute allows local landowners to vote to modify the legal standard for their area. The statute allows a local election to be held for the purpose of determining whether "horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats" or cattle and domestic turkeys are to be "permitted to run at large in the county or area."[x]

There are two important issues to flag on this topic: (1) 22 counties are prohibited from passing local stock laws related to cattle; and (2) local stock law elections, or at least those held after 1953, likely need to be species-specific.

First, in 1981, the Texas Legislature identified 22 counties that were prohibited from passing local stock laws related to cattle. The counties included are: Andrews, Coke, Culberson, Hardin, Hemphill, Hudspeth, Jasper, Jefferson, Kenedy, Kinney, La Salle, Loving, Motley, Newton, Presidio, Roberts, Schleicher, Terry, Tyler, Upton, Wharton, and Yoakum.[xi] Thus, while these counties may pass stock laws for other species, they are not allowed to pass laws for cattle, essentially mandating they be open range as related to cattle.

Second, then-Texas Attorney General Greg Abbott issued an Attorney General's Opinion finding a local stock law election held in Gonzales County in 2002 invalid because all species were included in one election, rather than holding separate elections for "horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats" and for cattle.[xii] In Gonzales County, landowners presented two separate petitions for election—one related only to cattle pursuant to Agriculture Code Section 143 Subchapter D, and one for horses, mules, jacks, jennets, donkeys, hogs, sheep, and goats pursuant to Agriculture Code 143 Subchapter B.[xiii] The election ballots combined the two, holding one election for all the listed animal species. Attorney General Abbot opined that a court would likely hold this election invalid given differences in signature requirements and wording between the two subchapters.[xiv] Instead, two separate votes should have been held.

Importantly, there is an unreported decision from the Amarillo Court of Appeals that may limit the application of this Attorney General Opinion. In *Ceniceros v. Pletcher*, the court considered a Gray County stock law passed in 1930, which include cattle along with the other listed animals in holding the local election.[xv] The court distinguished this case from the Attorney General Opinion given the date of the stock laws and the statutory provisions at issue. The statute requiring separate petitions and elections was passed in 1953.[xvi] Thus, the Court of Appeals held that one single election for cattle along with other animals held prior to 1953, which was conducted in accordance with the law at that time, was not invalidated by the 1953 statutory amendment.[xvii] For laws passed after 1953, however, the validity could be impacted by the structure of the election ballot.

b. Application of local stock laws.

For areas that have properly enacted local stock laws, the duty imposed on a livestock owner in an area with a local stock law is that he or she may not "permit" livestock to run at large.[xviii] As compared with the "knowingly permit" standard of the State and U.S. Highway Exception, this is a lower standard, meaning that a party alleging breach of duty will likely be able to prove "permit" more easily than "knowingly permit." In other words, the local stock law is a less livestock owner-friendly standard than the U.S. and State Highways exception's "knowingly permit." Nevertheless, the same factual considerations as noted above would be considered by a court to determine if the owner permitted the animals to run at large.

Again, Texas courts have analyzed what is meant by "permit" on a number of occasions. Definitions adopted in opinions include the following standards: "to consent expressly or formally," "to give leave," and "conscience or knowing conduct on the part of the individual."[xix] The application of these standards to real-life scenarios will be discussed below.

One additional issue may cause some confusion with regard to local stock laws. Under the statute, if a person "knowingly permits" livestock to run at large in a county that has a local stock law, that person is guilty of a Class C misdemeanor.[xx] Thus, in an area with a local stock law, while the standard for civil liability is "permit," there is the higher "knowingly permit" standard in order to impose criminal liability.

Determining whether one's county has passed a local stock law is, unfortunately, not an easy task for many landowners. There is no readily-available database or website where a person can go to look up local stock laws. Many of these laws were passed in the early 1900's and are recorded in Commissioner's Court records from that time. If a local stock law is found, a landowner should carefully review to determine to which species it applies and whether it applies to all or only part of the county.

Understanding this background related to open versus closed range and how these rules apply in Texas is critical to answering any fence law question that may arise.

III. COLLISIONS ON ROADWAYS

A number of reported fence law cases in Texas involve collisions between livestock and vehicles on a roadway. Analysis of which party may be held liable in those cases depends on whether the collision occurred in an open range or closed range area. For both scenarios, the cases make clear that the analysis undertaken by the courts is extremely fact-specific.

A. Open Range

As noted above, an open range area means that a livestock owner has no obligation to prevent his or her animals from running at large. In other words, no legal obligation requires the owner to fence his or her animals in. When a collision occurs in an open range area, generally, the livestock owner will not be held liable, as he or she did not owe a duty and therefore, could not have breached any duty.

For example, in *Gibbs v. Jackson*, a car hit a horse named Tiny on a farm-to-market road in a county that had not passed a stock law, so it was an open range area.[xxi] The driver filed a negligence action against the horse owner, arguing that the fence was in disrepair and the horse may have been out previously. Tiny's owner responded by arguing that these facts were inaccurate, but also irrelevant as he had no duty to keep the horse off the farm-to-market road. The Texas Supreme Court expressly held that there were only two situations where a duty could be imposed on an animal owner—the U.S. and state highway exception and local stock laws. As neither of these existed, the horse owner was not liable. Thus, in an open range area, there can likely be no liability for a livestock owner whose animal is hit by a motorist.

B. Closed Range

In a closed range area, the initial question when a collision arises is which standard applies and whether the livestock owner met the duty owed.

1. Application When Both Exceptions Could Apply

There is an important case currently pending before the Texas Supreme Court that could potentially impact the proper analysis of liability for a collision occurring on a closed range area on a U.S. or State highway. In that situation, where both the "knowingly permit" standard for the U.S. and State Highway and the "permit" standard for the local stock law could apply, is the livestock owner held to both standards, or does one trump the other? The resolution of this case could have important implications for landowners near U.S. or State Highways in closed range counties.

In *Garcia v. Pruski*,[xxii] a vehicle struck a bull on State Highway 123 in Wilson County, which has a valid local stock law applicable to the entire county. The driver filed suit against the owner of the bull. The driver argued that the less stringent "permit" standard should apply to the case per the local stock law. The bull owner argued that the "knowingly permit" standard from the Texas Agriculture Code Section 143.102 should apply as the collision was on a State Highway. Further, the bull owner pointed to language in the statute, stating that in the event that Section 102 conflicts with any remaining portions of the Code, Section 102 shall prevail, in supporting his argument that only the "knowingly permit" standard should be applicable.[xxiii]

The San Antonio Court of Appeals held that both the "knowingly permit" and "permit" standards were applicable. Under the facts in this case, the court held that the plaintiff failed to produce sufficient evidence that the bull owner "knowingly permitted" the bull to run at large, thereby dismissing that claim. However, the Court found sufficient evidence to survive summary judgment with regard to the issue of whether he "permitted" the bull to run at large.[xxiv] A Petition has been filed in this case, and the Texas Supreme Court requested briefing on the merits from the parties, with the final briefing due on June 5, 2019.[xxv]

2. U.S. and State Highway Exception

For collisions on a U.S. or state highway, the livestock owner may not "knowingly permit" the animal to run at large. Comparing two Texas cases may help to illustrate this analysis. In *Evans v. Hendrix*, cattle were hit by a tractor-trailer on a state highway.[xxvi] Evidence showed that the cattle were kept on the back portion of the landowner's property, on the opposite side from the highway, the owner kept the gate both chained and locked, and the owner was never told or saw his cattle being out on the highway. Under these facts, the court found that the cattle owner did not "knowingly permit" the cattle to run at large on the highway.

Conversely, in *Weaver v. Brink*, the court did find that the landowner knowingly permitted livestock to run at large when they were hit by a tractor-trailer on I-45.[xxvii] In that case, the evidence showed that the owner of the cattle knew that the cattle had previously escaped fences five or six times in the past 15 years, he knew that fences failed during hard rains, and knew there was a good chance the fences would fail that day yet did not go back to repair the fence on the day of the accident. Additionally, there was evidence that he knew the night before the accident the cattle were out, but did not get them off the highway. Again, each case will depend on these types of fact-specific considerations.

3. Local Stock Laws

For collisions occurring in counties with local stock laws, the standard for a livestock owner is that an owner may not "permit" the animal to run at large. Numerous courts have addressed this issue.[xxviii] For example, in *Rodriguez v. Sandhill Cattle Co.*, a driver collided with cattle on a farm to market road.[xxix] The cattle had been in a pasture surrounded by a one-strand electric fence, which it was discovered was broken after the accident. The plaintiff argued that the livestock owner "permitted" the cattle to run at large because there was only a one-strand fence, the cattle weighed 500 pounds, and there were 80 head on 60 acres. The Court rejected this analysis, finding these facts insufficient to impose liability for "permitting" the cattle to run at large. The court noted no evidence existed that a single strand electric fence was less sufficient than a

multi-strand barbed wire fence, that the cattle were not hot wire broke, that the cattle had previously escaped the fence, or that the owners failed to inspect or had knowledge of the operational nature of the fence.

IV. ANIMALS ON PROPERTY OF ANOTHER

Another issue that frequently arises regarding fence law is what can be done if one person's livestock enters onto the property of another. Again, determining whether the area is open range or closed range is critical.

A. Open Range

Generally speaking, a landowner may not recover damages caused by another's livestock entering the landowner's property in an open range area. Again, this is due to the fact that there exists no legal duty for the livestock owner to fence in his or her animals. Rather, the obligation rests with the neighboring landowner to fence the livestock out. As the Texas Supreme Court explained, "it follows that one who desires to secure his lands against the encroachments of livestock running at large, either upon the open range or in an adjoining field or pasture, must throw around it an enclosure sufficient to prevent the entry of all ordinary animals of the class intended to be excluded. If he does not, the owner of the animals that may encroach upon it will not be held liable for any damage that may result from such encroachment."[xxx]

For example, in *Hicks v. Lee*, a landowner brought a negligence and trespass suit against a cattle owner when the cattle got onto the landowner's property and destroyed his hay crop.[xxxi] In the absence of a local stock law, the court held there is no duty owed to form the basis of a negligence claim, and there can be no trespass as a matter of law.

There are, however, a handful of exceptions to this rule which could allow a neighboring landowner to recover damages even in an open range area, in limited circumstances.

First, in the event that the livestock owner intentionally drives the animals onto the neighboring landowner's property, the owner may be held liable for trespass.[xxxii]

Second, if the cattle are known to the owner to be diseased, breachy, or viscous (fence breaking or otherwise), the owner may not permit them to run at large and may be held liable for damages if he or she does so.[xxxiii]

Finally, if a landowner in an open range area builds a fence sufficient to keep out ordinary livestock of the class at issue, yet the animals still get into the property, the animal owner may be held liable. As the Amarillo Court of Appeals has explained, "when the open-range doctrine applies, a landowner is required to fence out particular livestock with a sufficient fence; otherwise, the landowner would not be able to recover from the livestock owner for any property or crop damage done by the livestock."[xxxiv] The Texas Agriculture Code provides a non-exclusive list of fences qualifying as "sufficient" under these circumstances, requiring them to be at least four feet high and comply with the following: (1) A barbed wire fence must consist of three wires on posts no more than 30 feet apart, with one or more stays between every two posts; (2) A picket fence must consist of pickets that are not more than six inches apart (3) A board fence must consist of three boards not less than five inches wide and one inch thick; and (4) A rail fence must consist of four rails.[xxxv]

Thus, while possible, there are limited circumstances which livestock owners can be held liable for animals in an open range area.

B. Closed Range

In a county that previously passed a local stock law, animals entering the property of another may be trespassing and the owner held liable for any ensuing damage, but only if the owner "permitted" them to run at large. The mere fact that animals are on the property of another does not impose liability.[xxxvi] Thus, it would be a similar fact-specific inquiry as courts have undertaken with regard to collisions to determine if the livestock owner violated a duty and damages could be recovered. Common factors to be evaluated include if the animals had been out before, how long they were on the property of another, and the quality and condition of boundary fences.

C. Estray Laws

One additional statutory provision for Texas attorneys to be aware of is Texas Agriculture Code Section 142, which governs "estrays." This statute provides the procedure by which a landowner can seek the removal of stray livestock from his or her property. The law is quite different than the school-yard rules of "finders keepers." Instead, the statute requires a landowner upon whose property the stray livestock are located to contact the sheriff's office in order to begin the process of removing the animals from the landowner's property. The statute requires notice be posted by the sheriff and, if no owner can be found, the animals are to be sold at public auction with proceeds going to pay sale expenses, sheriff's impoundment costs, and expenses of reporting landowner for maintenance or damages, respectively.[xxxvii] In the event that the animal presents a perilous condition (a situation in which capture and impoundment of the animal presents an immediate threat to law enforcement or the health of the animal, the sheriff may dispose of the animal in any manner necessary without notice to the owner.[xxxviii] Of course, if the landowner knows the livestock owner and can work to get the animals removed without involving law enforcement, that is likely a better option for all.

V. BUILDING, REPLACING, AND MAINTAINING FENCES

Another area of dispute in Texas is relates to the building, replacing, and maintenance of fences on rural property. Attorneys should be prepared to advise rural landowners on the following issues.

A. No Obligation to Share Costs

First, Texas law does not require neighboring landowners to share in the costs or future maintenance of a boundary fence, unless a landowner has agreed to do so. As explained by the Texas Supreme Court, "if on proprietor encloses his land, putting his fence upon his line, the owner of the adjacent land may avail himself of the advantage thereby afforded him of enclosing his own land without incurring any liability to account for the use of his neighbor's fence."[xxxix] Thus, while landowners certainly can seek compensation from neighbors in building or repairing fences, a landowner may not force cost sharing if the neighbor is unwilling to do so.

The result of a neighboring landowner refusing to share in costs of erecting a boundary fence is that the landowner who paid to build the fence becomes the sole owner of the fence itself; it no longer remains jointly-owned property.[xl] Landowners who do pay all expenses to erect a dividing fence should take care to document that fact in order to prove ownership of the fence should that be called into question.

B. Removal of Adjoining Fences Statute

The Removal of Adjoining Fences statute addresses when jointly-owned fences may be removed and when fences attached to jointly-owned fences can be removed.[xli] Although there have been no appellate level cases applying these provisions, it is important for attorneys and landowners to be aware of these rules.

First, the statute states that a person may not remove a fence that is a separating or dividing fence in which the person is a joint owner absent mutual consent from both parties.[xlii] Generally, unless one party paid the costs to have a dividing fence built without any contribution from the neighboring owner, dividing fences would be considered jointly owned. This means that if a landowner wishes to remove a fence dividing his property from his neighbors, consent from the neighbor would be required.

Second, the statute states that a person may not remove a fence that is attached to a fence owned or controlled wholly or partially by another person, absent consent from the owner of the fence or upon giving six months' notice.[xliii] One way this could occur is if one landowner solely paid to build a dividing fence, making that fence his own property. If a neighboring landowner wished to remove a fence on that neighboring landowner's own property that was attached to the dividing fence, he would have to obtain permission from the owner of the dividing fence or give six months written notice prior to the removal.

Third, a person who owns a fence wholly on his or her own property may require an owner of an attached fence to disconnect the fence by giving six-months written notice.[xliv] An example where this could arise is if a person built a dividing fence not on the property line, but inside his or her own property. In that situation, the property owner would own the fence and could require disconnection of adjoining fences by giving such notice.

C. Liability for Damaging Neighboring Fences

There are certain situations in which a person may be liable for causing damage to the fence of another. Under Texas law, this type of liability can arise in both the criminal and civil context.

1. Criminal Liability

Under the Texas Penal Code,[xlv] a person can be convicted of criminal mischief for damaging another person's fence. In order for the State to successfully prosecute a criminal mischief claim in the fence context, it must prove: (1) the defendant committed the act of damaging another's fence; (2) the defendant did not have consent to alter the fence; and (3) the defendant acted with malice, mischief, intent, or knowledge.[xlvi] Depending on the monetary value of the damaged property, violation of this statute can result in either misdemeanor or felony charges.[xlvii] For example, in *Pfeifer v. State*, the defendant was found guilty of criminal mischief where he removed a wooden fence constructed by his neighbor without permission and entered the neighbor's property to install his own fence post.[xlviii]

2. Civil Liability

A person who damages another person's fence may also face potential civil liability, generally under claims of either trespass or negligence.

With regard to trespass claims, a plaintiff must prove: (1) the plaintiff owns the fence; (2) the defendant's entry onto the land was physical, intentional, and voluntary; and (3) the defendant's trespass caused injury to the plaintiff.[xlix] If a person who commits trespass damages a fence, he or she will be liable to pay damages for the wrongful destruction of the fence.[l] This includes the cost of "like material" to restore the fence to the same manner it was in before it was damaged, as well as the cost of labor to complete the reconstruction.[li] Further, if the plaintiff can prove that the defendant acted maliciously, the court may award exemplary damages.[lii] With negligence claims, actual damages are due to the injured party, which may include the material and labor necessary to construct the fence and the value of the fence as an enclosure on the land.[liii]

For example, in *Pool v. Dickson*, when a neighbor's ranch hand trespassed upon the adjoining

neighbor's property and bulldozed down the next-door neighbor's hog-wire fence, the court held that the defendant was liable for costs to repair the fence to the condition it was in immediately before it was destroyed.[liv] Similarly, in *Daniels v. Wells Branch Municipal Utility District*, the court required a trespasser to pay for the cost to rebuild a fence that he damaged with a front-end loader.[lv] The court rejected the defendant's argument that his damages should be limited to the value of the old fence that was damaged, as opposed to the jury's damage award equal to the cost of constructing a new fence of substantially the same construction.[lvi] The court rejected this argument, finding the materials used to repair the fence substantially similar, although newer, and finding no evidence that the fence was repaired was of substantially better construction than the damaged fence.

D. Wrongful Construction of Fence in Boundary Dispute

One final area of dispute that arises relates to fences wrongfully constructed on the property of another due to a mistaken belief regarding property lines. Generally, a person who wrongfully constructs a fence on the property of another must remove the fence, even if doing so is expensive or difficult.[lvii]

There is one potential exception, the rule of betterments, that can apply in limited situations.[lviii] Essentially, this equitable doctrine allows a person to recover compensation for improving the land of another in good faith.[lix] In order for a person to receive such compensation, the party seeking payment must prove: (1) they believed they were the true owner of the land; (2) they had a reasonable ground for that belief; and (3) they were unaware their title was contested by anyone having a better right.[lx]

For example, the court applied this rule of betterments in *Jacobs v. Malone*.[lxi] There, the plaintiff constructed a fence along an original fence line that the defendants claimed encroached on their land. The plaintiff argued that if this was true, she was entitled to recover damages because the fence was constructed in good faith belief because it was erected on the original fence line. The court agreed, finding each of the three elements satisfied, and awarding actual damages to the plaintiff for her costs.

VI. CONCLUSION

Texas fence law is an interesting area of practice. Given the number of different potential issues, from livestock on the roadway to animals destroying a neighbor's crop, to disputes with regard to boundary fences, all attorneys should be familiar with the law in this area.

VII. ADDITIONAL INFORMATION

- Tiffany Dowell Lashmet, Jim Bradbury, & Kyle Weldon, *Five Strands: A Landowner's Guide to Fence Law in Texas* (2017), *available at* https://agrilifecdn.tamu.edu/texasaglaw/files/2016/08/Five-Strands-for-Download.pdf.
- Ag Law in the Field Podcast (Fence Law), (forthcoming Summer 2019), *available at* www.aglaw.libsyn.com.

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[i] *Gibbs v. Jackson*, 990 S.W.2d 745, 747 (Tex. 1999).
[ii] *Compare* Texas Agric. Code § 143.021 *with* Texas Agric. Code § 143.102.
[iii] Texas Agric. Code § 143.101 – 143.108.
[iv] *Id.* § 143.102.
[v] *Id.* § 143.101.
[vi] *Id.*§ 143.108.
[vii] *Garcia v. Pruski*, No. 04-17-00632-CV, 2018 WL 4096392 (Tex. App.—San Antonio Aug. 29, 2018, pet. filed).
[viii] Id.
[ix] Texas Agric. Code § 143.021-143.027; § 143.071-143.075.
[x] *Id.* § 143.021; § 143.071.
[xi] *Id.* § 143.072.
[xii] Texas Att'y Gen. Op. GA-0093 (Aug. 8, 2003), *available at* https://www2.texasattorneygeneral.gov/opinions/opinions/50abbott/op/2003/pdf/ga0093.pdf.
[xiii] *Id.*
[xiv] *Id.*
[xv] , No. 07-15*-00427-CV, 2017 WL 2829325, at *6 (Tex. Ct. App. – Amarillo June 29, 2017).
[xvi] *See id.*
[xvii] *Id.*
[xviii] Texas Agric. Code § 143.021; § 143.071.
[xix] *Rose v. Herbert Heirs*, 305 S.W.3d 874 (Tex. Ct. App. – Beaumont 2010); *Rodriguez v. Sandhill Cattle Co.*, 427 S.W.3d 507 (Tex. Ct. App. – Amarillo 2014).
[xx] Texas Agric. Code § 143.034; § 143.082.
[xxi] *Gibbs v. Jackson*, 990 S.W.2d 745, 747 (Tex. 1999).
[xxii] 563 S.W.3d 333 (Tex. Ct. App. – San Antonio 2018, pet. filed).
[xxiii] Texas Agric. Code § 143.107.
[xxiv] *Garcia v. Pruski*, 563 S.W.3d 333 (Tex. Ct. App. – San Antonio 2018, pet. filed).
[xxv] *See Garcia v. Pruski*, No. 18-0953, *available at* http://www.search.txcourts.gov/Case.aspx?cn=18-0953&coa=cossup.
[xxvi] *Evans v. Hendrix*, No. 10-10-00356-CV, 2011 WL 3621337 (Tex. Ct. App. – Waco Aug. 17, 2011).
[xxvii] *Weaver v. Brink*, 613 S.W.2d 581 (Tex. Ct. App. – Waco 1981).
[xxviii] *See Rose v. Herbert Heirs*, 305 S.W.3d 874, 881 (Tex. Ct. App. – Beaumont 2010) (bull owner did not "permit" animal to run at large absent evidence that indicated he had visited the property on the date of the collision, had left a gate open, had authorized anyone else the right to leave the

gate open, had received notice of the bull's escape prior to the collision, had awareness of any cattle previously escaping the pasture, or the fence not being fit for ordinary uses); *Dearbonne v. Courville*, , No. 09-16-00440-CV, 2018 WL 4354310, at *9 (Tex. Ct. App. Beaumont Sept. 13, 2018, no pet.) (no evidence that horse owner permitted animal to run at large as there was no evidence the owner left a gate open, authorized another to leave a gate open, no evidence of how or when his horses escaped, no evidence that upon learning horses were out the owner did nothing, no evidence that the fences were in disrepair, and no evidence that horses previously escaped); *Van Horne v. Harris*, No. 2-06-183-CV, 2007 WL 865801, at *4 (Tex. Ct. App. – Ft. Worth Mar. 22, 2007) (bull owner whose bull was on the property of another did not permit animal to run at large as there was an electric fence on the property, the bull owner did not know the bull had escaped on prior occasions, the bull owner believed the fences on the property to be adequate, and the bull owner had no involvement with the bull other than ownership).

[xxix] *Rodriguez v. Sandhill Cattle Co.*, 427 S.W.3d 507 (Tex. Ct. App. – Amarillo 2014),
[xxx] *Clarendon Land, Investment & Agency Co. v. McClelland*, 23 S.W. 576, 577 (Tex. 1893).
[xxxi] *Hicks v. Lee*, No. 04-02-00049-CV, 2003 WL 1090599 (Tx. Ct. App. – San Antonio 2013).
[xxxii] *Clarendon Land, Investment & Agency Co. v. McClelland*, 23 S.W. 576, 577 (Tex. 1893).
[xxxiii] Id.
[xxxiv] *Harlow v. Hayes*, 991 S.W.2d 24 (Tex. Ct. App. – Amarillo 1998).
[xxxv] Texas Agriculture Code § 143.028.
[xxxvi] *Texas & P. Ry. Co. v. Webb*, 102 Tex. 210 (Tex. 1908).
[xxxvii] Tex. Agric. Code § 142.013.
[xxxviii] Tex. Agric. Code §§ 142.009; 142.003(d)(2).
[xxxix] *Nolan v. Mendere*, 14 S.W. 167 (Tex. 1890).
[xl] *Conner v. Joy*, 150 S.W. 485 (Tex. Ct. App. – Ft. Worth 1912).
[xli] Texas Agric. Code § 143.121-143.123.
[xlii] *Id.* § 143.121.
[xliii] *Id.* § 143.121; § 143.122.
[xliv] *Id.* § 143.123.
[xlv] Tex. Penal Code § 28.03.
[xlvi] *Id.*; *Hurlbut v. State*, 1882 WL 9244, at *2 (Tex. Ct. App. 1882); *Brumley v. State*, 12 Tex. App. 609, 612 (Tex. Ct. App. 1882).
[xlvii] Tex. Penal Code § 28.03.
[xlviii] *Pfeiffer v. State*, No. 04-07-00462-CR, 2008 WL 3056837, at *1 (Tex. Ct. App. – San Antonio Aug. 6, 2008).
[xlix] *Wilen v. Falkenstein*, 191 S.W.3d 791, 798 (Tex. Ct. App. Ft. Worth 2006).
[l] *Jackson v. Wallis*, 514 S.W.2d 335, 338 (Tex. Ct. App.—Houston [1st Dist.] 1974, writ denied) (holding that the responsible party must pay for the reasonable value of the fence); *Jackel v. Reiman*,14 S.W. 1001, 1002 (1890) (holding that the responsible party must pay for the fence to be restored to the same manner as before it was destroyed); *Daniels v. Wells Branch Mun. Util. Dist.*, No. 03-09-00301, 2010 WL 4367017, at *2 (Tex. Ct. App.—Austin Nov. 5, 2010, no pet.) (mem. op.) (holding that the trespasser is responsible for materials and labor needed to rebuild fence); *Pool v. Dickson*, 512 S.W.2d 68, 69 (Tex. Ct. App.—Tyler 1974, writ denied) (holding that the responsible party must pay to restore the fence to the condition it was before it was destroyed).
[li] *Daniels*, 2010 WL 4367017, at *2.
[lii] *Gardner v. Kerly*, 613 S.W.2d 795, 796 (Tex. Ct. App.—Houston [14th Dist.] 1981).
[liii] G*ulf & S.F. Ry. Co. v. Wallace*, 37 S.W. 382 (Tex. Ct. App. 1986).
[liv] *Pool*, 512 S.W.2d at 68.
[lv] *Daniels*, 2010 WL 4367017, at *2.
[lvi] *Id.*
[lvii] *Green v. Parrack*, 974 S.W.2d 200 (Tex. Ct. App. – San Antonio 1998).
[lviii] *Jacobs v. Malone*, No. 11-92-177-CV, 1993 WL 13141659, at *2 (Tec. Ct. App. – Eastland May 6, 1993).
[lix] *Id.*
[lx] *Id.*
[lxi] *Id.*