



# SOME FARM AND RANCH LEGAL RISKS: Livestock and entrant tort liability

*By Alan Schroeder*

You've found your dream place – a property in a rural subdivision permitting livestock with a barn, pasture, farmland, and an old wooden windmill feeding a watering hole and irrigation ditches.

You've worked through the finances and resource management plan.

Have you considered the potential legal (tort) risks associated with your new enterprise? If not, you should.

A landowner's legal responsibilities can come from many sources – from contracts and covenants to violations of governmental land use or environmental rules. The focus here is on potential legal (tort) liability associated with having animals or people on your new place. A tort is a breach of a duty imposed by law that authorizes a person or persons harmed by such a breach to sue the responsible person or persons for damages.

## **What duties do owners owe to persons injured by animals under the owners' control (pets or livestock)?**

The duties owed for personal injuries depend upon the nature of the animal, the owners' knowledge of any dangerous tendencies, the accident's circumstances, and the owners' preventative actions.<sup>1</sup> Thus, the animal owners' liability in cases involving

- wild animals under their "control" is strict liability (liability without fault);
- domestic animals with known dangerous tendency is strict liability;
- domestic animals with no known dangerous tendencies is negligence (failure to exercise reasonable care).

"Domestic animals" are ones "devoted to the service of mankind at the time and in the place in which (they are) kept."<sup>2</sup> Generally, livestock and dogs qualify as domestic animals while a pet raccoon most likely will be labeled a wild animal. Under Wyoming law, owners are still liable if they fail to exercise reasonable care to

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prevent their dogs from causing injury even if their dog had not attacked before.<sup>2</sup>

## What duties are owed for property damaged by livestock?

Wyoming is a “fence-out” state. Generally, a landowner may only collect for property damages if the neighbors’ livestock or domestic buffalo, for example, breached a lawful fence.<sup>3</sup> For more on fencing issues, see the Alan Schroeder and Cole Ehmke additional reading referenced on page 19.

Wyoming law has several exceptions to the fence-out requirement. For example, livestock owners are still liable if:

- they drive their livestock onto another’s land.<sup>4</sup>
- the incident occurs in a “livestock district” designated by the board of county commissioners.<sup>5</sup>
- the damages are caused by swine, goats, or domestic elk.<sup>6</sup>

## What duties are owed to persons coming onto landowners’ property?

Wyoming law places entrants into two categories: trespassers (those on another’s property without permission) and all others.<sup>7</sup>

Landowners owe entrants the following duties<sup>7</sup>:

- trespassers: “[N]ot to willfully or wantonly harm.”<sup>7</sup>
- all others: “[R]easonable care under the circumstances’.... The foreseeability of the injury, rather than the status of the lawful entrant, should be the basis for liability.”<sup>7</sup>

The “all others” test focuses on foreseeability.

Landowners owe virtually no duty to unexpected visitors (other than to not “willfully or wantonly harm”) while being obligated to inspect and address hidden defects that might impact those known to come onto the property.

## Do landowners owe special duties to trespassing children?

The attractive nuisance doctrine imposes a special duty of care on those having artificial conditions on their property that entice and endanger trespassing children.<sup>8</sup> For this to apply: a) the landowner knows or has reason to know children are likely to trespass; b) the condition “involves an unreasonable risk of death or serious bodily harm;” c) the children, because of their youth, will not appreciate the danger; and d) “the utility to the possessor of maintaining the condition and the burden of eliminating

the danger are slight as compared with the risk to children involved.” In such cases, the landowner is required “to exercise reasonable care to eliminate the danger or otherwise to protect the children.”

Under our facts, the wooden windmill and barn are likely to qualify as both artificial conditions and attractive nuisances if characteristics (a)-(d) are satisfied. A tree on this same property will not; it is a natural condition. Similarly, a tractor – parked with its cultivators up and adjacent to a rural subdivision where the tractor owner knows young children play – is likely to be found an attractive nuisance under characteristics (a)-(d). Regarding characteristic (d), it seems clear the potential benefit to the tractor owner of keeping the cultivators up and the burden (placing the cultivators on the ground) are slight compared to the foreseeable danger one young child known to be playing there might drop the cultivator on another.

Wyoming courts have not considered if ditches are attractive nuisances. Courts in other jurisdiction have generally treated natural streams and artificial channels (ditches and irrigation canals) the same, finding neither to be attractive nuisances absent special circumstances that create a trap for children.<sup>9</sup> The Wyoming Supreme Court has refused to apply the attractive nuisance doctrine to a water-filled gravel pit.<sup>10</sup>

No Wyoming cases address whether livestock are attractive nuisances. Courts in other jurisdictions have held it is unlikely domestic animals would pose an “unreasonable risk of death or serious bodily harm” to children, absent a known dangerous tendency.”<sup>11</sup>

## Are there special rules governing hunters and others on the property for recreational purposes?

Wyoming’s statutes effectively limit landowners’ liability to persons permitted onto their property for recreational purposes to that owed to trespassers.<sup>12</sup> For







this statute to apply, landowners must not charge for using their land.

### Taking Stock

Whether purchasing a new, land-based business or expanding an old one, it is important to assess its legal risks. This article covers only a small number of such exposures, and it is not intended to be a substitute for competent legal advice. Property owners should inspect their lands to identify potential risks and work with both their attorneys and insurance agents to control their legal exposures. Otherwise, their dream purchase may become a forced sale to cover resulting tort claims.

### Additional Readings

- Sandra Frost, "Answering ditch irrigation rights, distribution questions," *Barnyards & Backyards* (Fall 2008), available at <http://barnyardsandbackyards.com/articles.htm>.
- Lucy Pauley, "Suggestions help keep relations with neighbors on even keel," *Barnyards & Backyards* (Spring 2007), available at <http://barnyardsandbackyards.com/articles.htm>.
- Alan Schroeder and Cole Ehmke, *Avoiding a Border War: Beginning a Conversation with a Neighbor about Border Fences*, B-1194, University of Wyoming Cooperative Extension Service (2009), available at <http://ces.uwyo.edu/PUBS/B1194.pdf>.
- U.S. Department of Agriculture's Risk Management Agency, *Introduction to Risk Management Legal Issues Associated with Agriculture* (2005), available at [www.rma.usda.gov/pubs/1997/irm\\_e.html](http://www.rma.usda.gov/pubs/1997/irm_e.html).

### Citations

- 1 *Borns v Voss*, 70 P.3d 262 (Wyo. 2003).
- 2 Restatement (Second) of Torts § 506(2)(1977).
- 3 Wyo. Stat. Ann. § 11-28-108 (a) (2007).
- 4 *Harmony Ditch Co. v. Sweeney*, 222 P. 577 (Wyo. 1924) (sheep herded onto neighboring land). See *R.O. Corp. v. Bell Iron Mountain Ranch Co.*, 781 P.2d 910 (Wyo. 1989) (placing animals on adjoining unfenced property does not trigger this rule).
- 5 Wyo. Stat. Ann. 11-33-101 et seq. (2007).
- 6 Wyo. Stat. Ann. § 11-26-101(a) (2007).
- 7 *Clarke v. Beckwith*, 858 P.2d 293 (Wyo. 1993).
- 8 *Thunder Hawk v. Union Pac. R.R.*, 844 P.2d 1045, 1049 (Wyo. 1992) (adopting the Restatement [Second] of Torts) § 339 (1965).
- 9 *Partin v. Olney*, 591 P.2d 74, 76 (Ariz. 1978); *Bailey v. Mobile*, 296 So. 2d 149 (Ala. 1974); *Hayes v. Criterion Corp.*, 337 So. 2d 1026 (Fla. App. 1976); *Jacobsen v. Rathdrum*, 766 P.2d 736 (Ida. 1988); *Corcoran v. Libertyville*, 383 N.E.2d 177 (Ill. 1978); *Limberhand v. Big Ditch Co.*, 706 P.2d 491, 496 (Mont. 1985); *Trujillo v. Brighton-North Point Irrigation Co.*, 746 P.2d 780 (Utah 1987); *Meyer v. GE Co.*, 280 P.2d 257 (Wash. 1955).
- 10 *Maher v. City of Casper*, 219 P.2d 125 (Wyo. 1950).
- 11 *North Hardin Developers Inc. v. Corkran*, 839 S.W.2d 258 (Ky. 1992).
- 12 Wyo. Stat. Ann. § 34-19-101 et seq. (2007).

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