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Open Range Law in Arizona

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“Open Range Law” is an effort by the legislature in Arizona and in Western states to accommodate the historic desire to make large acreages of arid land available for livestock grazing along with other uses. Open Range Law includes a series of statutes that have been interpreted and applied by the state courts. The basic rule reflects the spirit of settling the west: livestock roam freely except as otherwise provided by law. While some of the limitations are significant as will be noted below, the basic rule still reflects the original character of settling the state by promoting agricultural use of the land. The point of current laws is to establish priorities for the use of the land. Rules addressing livestock use of land are basically divided between those for “open range” and those for “no-fence districts”.

In general

Open range means that livestock can go where they want within the range, subject to some limitations. The need for further rules arose because of landownership patterns in the West. Large ranches owned by one person often surround smaller parcels, inholdings, owned by another person. Under Arizona law, it is the responsibility of the owner of the inholdings to erect a fence that meets the requirements of the law (ARS, 3-1426), termed a “legal fence”, to keep roaming livestock out of his or her property. This saves the rancher from having to fence all the small parcels that may exist within the boundaries of his ranch lands. Without the erection of such a fence, the inholding owner would have no recourse under the law for any damage caused to his property by the livestock. (ARS, 3-1427). “The obvious purpose and effect of [this statute] was to . . . make the owner of private premises fence his land to keep animals out, rather than to compel the owner of the animals to fence the land upon which they were grazing in order to keep them in.” Garcia v. Sumrall, 58 Ariz. 526, 535 (1942).

However, the fencing-out statute does not completely immunize livestock owners from liability for damages. They are still liable for acts of willful trespass, defined as “deliberately and intentionally causing their animals to trespass upon private property.” Cienega Cattle Co. v. Atkins, 59 Ariz. 287 (1942). “However, the mere knowledge or expectation that cattle will wander onto private property is insufficient to support liability, and in those cases, the statute requires that the [harmed party] erect a fence in order to recover damages.” Carrow Co. v. Lusby, 167 Ariz. 18 (1990).

In Relation to Motorists on Highways

According to Arizona open range law, cattle may also lawfully enter upon the public highway. See Stuart v. Castro, 76 Ariz. 147, 151 (1953). This conclusion is implied by § 24-342, (currently § 3-1427), which makes such activity unlawful in areas designated as no-fence districts and renders livestock owners subject to civil and criminal liability for permitting their animals to run at large in those areas. Id. Nevertheless, “[a]n owner of livestock owes a duty of ordinary care to motorists traveling on a public highway in open range”. Carrow Co. v. Lusby. However, “in order to establish a breach of that duty, the

[injured party] must point to specific acts or omissions of [the livestock owners] that caused their damages.” Id. “[T]he mere failure to prevent one’s cattle from entering the highway, by erecting fences or otherwise, does not constitute conduct falling below the standard of care required of livestock owners.” Id.

The difficult challenge of identifying “specific acts or omissions” of livestock owners to hold them liable for damages is illustrated by the case of Brookover v. Roberts Enterprises, Inc., No. CV05-0444, Court of Appeals, State of Arizona, Division One (May 8, 2007). While driving on the Salome Highway through the Clem Allotment on open range, Brookover struck a cow with the right front of his vehicle, causing the vehicle to roll and land on its roof. Roberts leased the property with the Clem Allotment in July 2003. He did not erect any fence along the highway. This was the first reported accident involving an animal and a motor vehicle since Roberts occupied the leased premises. Brookover was aware of the presence of cattle along the highway but had never before seen cattle on the Clem Allotment.

Testimony from the ranch managers indicated they are aware of increases in the number of accidents between cows and vehicles after a highway is paved. This was the case with the Salome Highway. The rancher argued that knowledge of other accidents is not relevant to the conditions on the highway through the Clem Allotment which led to the accident at issue. Moreover, this was the first reported cow-motorist accident on that portion of the highway running through the Allotment. The jury did not find that the rancher had notice of any specific dangerous conditions created by its cattle at any particular point on the highway.

The ranch manager also testified that cows will wander two to five miles from their water source. The evidence showed there was a dirt reservoir about a mile from the highway which provided water for the cattle. The jury found the rancher not responsible for placing water near the highway, thereby causing cattle to be present on the road.

The court ruled that Brookover failed to carry his burden of showing “specific acts or omissions” that caused the accident. The decision demonstrates that accidents arising from ordinary ranching operations in open range country will not likely support a claim for damages against the owner of livestock.

Other Open Range Rules

- If livestock are killed in an open range area, whether it is an accident or not, a person may be liable to the owner for damages.

No-Fence District

- County Boards of Supervisors are authorized to designate no-fence districts. ARS 3-1421.
- Most Arizonans do not live in a no-fence district. Contact County Board of Supervisors to determine whether you do. Counties with designated no-fence districts include Maricopa and Pima. A check with the Mohave County office indicates one district was designated in 1965 and is still in effect.
- Livestock owners are guilty of a class 2 misdemeanor if they “recklessly” allow or permit livestock to run at large within a no-fence district. The owners are also liable for damages for trespass on land enclosed within lawful fences, ARS, 3-1424, as well as for damages caused on unfenced land in no-fence districts. ARS, 3-1427.