

Cows That Jump the Fence

Liability for Livestock in Texas

Jim D. Bradbury

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Texas Bar Animal Law CLE Webinar

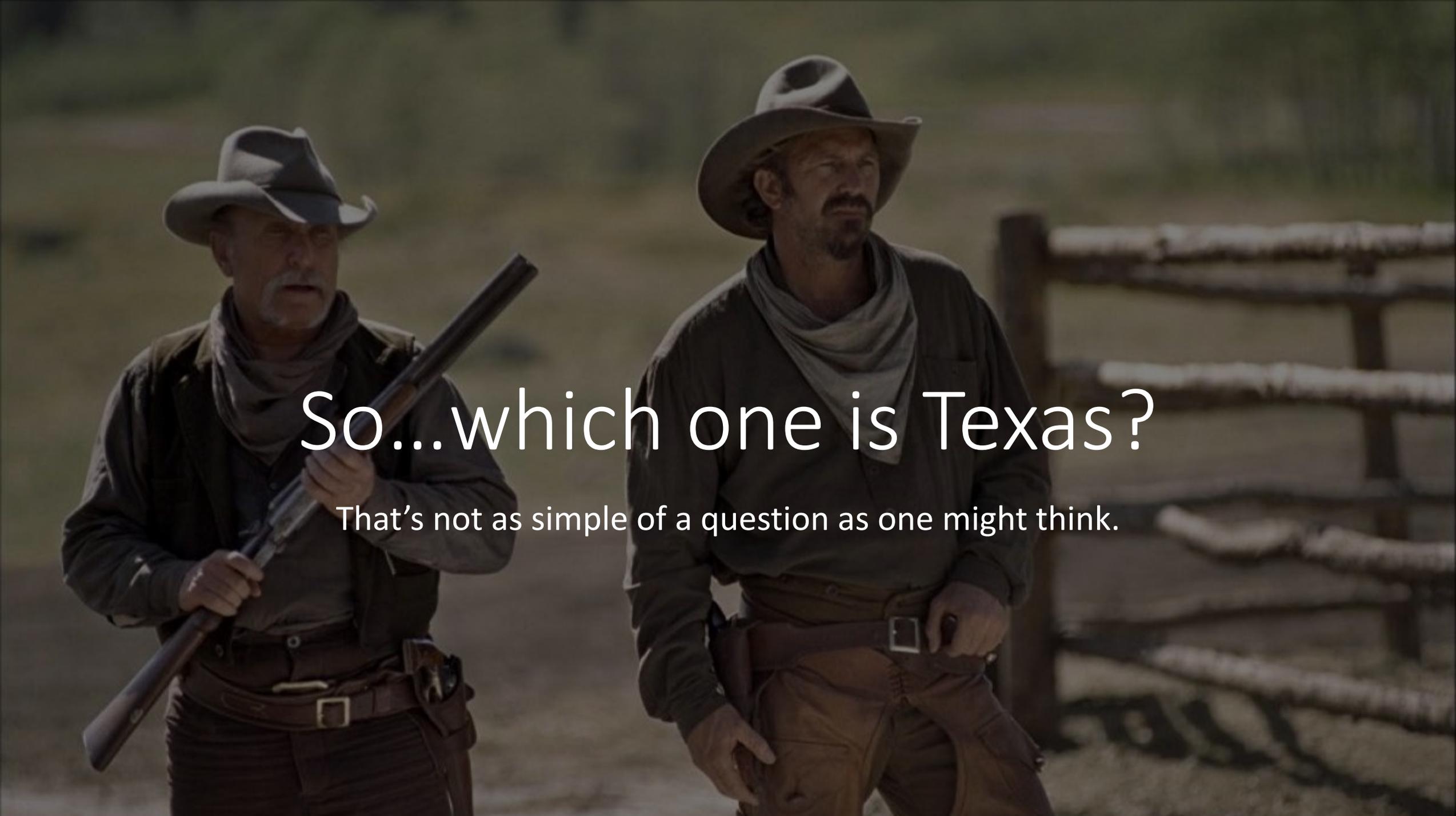
A photograph of a cow standing behind a barbed wire fence in a grassy field at sunset. The sun is low on the horizon, creating a warm, golden glow. The cow is silhouetted against the bright sky. The fence consists of wooden posts and several strands of barbed wire. In the background, there are rolling hills and a few trees.

Fence Law

Liability for Livestock on the Roadway

- First question is whether the collision occurred in a “closed range” or “open range” area.
- What’s the difference?
 - “Closed range” means there is a legal obligation on a livestock owner to prevent his animals from running at large.
 - “Open range” means there is no such legal obligation.



A photograph of two men in cowboy attire standing in a field. The man on the left is older, with a grey beard, wearing a grey hat and a dark jacket, holding a long-barreled rifle. The man on the right is younger, with a dark beard, wearing a dark hat and a dark jacket, looking off to the side. The background is a blurred field with a wooden fence on the right.

So...which one is Texas?

That's not as simple of a question as one might think.

Texas Approach

A cowboy wearing a straw hat and a red shirt is riding a brown horse in a grassy field. In the background, several black cattle are grazing. The scene is set during the golden hour of sunset or sunrise, with a warm, soft light.

- General rule: Texas is an open range state.
 - TX Supreme Court (1999): *“It is the right of every owner of domestic animals in this state to allow them to run at large.”*
- Two MAJOR exceptions:
 - US and State highways are closed range.
 - Local stock laws change the vast majority of counties to closed range.

US & State Highways

- Owner/controller of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to run at large on the right-of-way of a highway. (Tex. Agric. Code 143.102)
 - What is a “highway?”
 - All US and state highways, but not farm-to-market roads.
 - What does it mean to “knowingly permit?”
 - Based upon the factual circumstances.
 - Quality of fence, frequency animals are out, frequency of inspection of fences, prior accidents or issues.



Local Stock Laws



- In many parts of Texas, local elections were held and the laws in that county changed from open to closed range.
- Most of these happened in the early 1900's.
- Can make it difficult to determine the law in your particular county.

Stock Law Election Proclamation, for Hunt County, Texas.

Whereas on the 14th day of December A D 1907, an election was held in Hunt County, Texas, at the usual voting places in the several Election Precincts in said County, to determine whether or not Horses, mules, jacks, jennetts and Cattle should be permitted to run at large in Hunt County, Texas; And whereas at said election there were 1726 votes cast as follows:

For the Stock Law. - - 1516 votes

Against the Stock Law. - - 210 votes.

And it appearing that there was a majority cast for the Stock Law, of 1306, votes at said Election, and that said election was held in accordance with law and the returns thereof, having been opened by the undersigned, tabulated and counted in the presence of Wiley Green, County Clerk of Hunt County Texas, and of C. V. Seddy, County Attorney, and of J. H. Dial, all being respectable citizens, of Hunt County, Texas, with the result above stated.

Now therefore, I, J. W. Manning, County Judge in and for Hunt County, Texas, by virtue of the premises, and pursuant to the authority vested in me by law, do hereby declare said election to be in favor of the Stock Law, and from and after thirty days from this date, it shall be unlawful for Horses, Mules, Jacks, Jennetts and Cattle to run at large within the limits of said Hunt County.

Witness my hand and official seal of Hunt County, Texas, this 23^d day of December, A D 1907.

(Seal)

J. W. Manning, County Judge,
Hunt County, Texas.

Prohibition on Local Stock Laws

In 1981, the Legislature exempted some counties from being able to enact a stock law.

Andrews	Jasper	Motley	
Coke	Jefferson	Newton	Tyler
Culberson	Kenedy	Presidio	Upton
Hardin	Kinney	Roberts	Wharton
Hemphill	LaSalle	Schleicher	Yoakum
Hudspeth	Loving	Terry	

Analyzing a Local Stock Law

1

Determine if your county has a local stock law

- Contact county clerk, county attorney, or sheriff
- Usually include in minutes of county commissioner's court

2

Determine to which animals the law applies

- Usually different laws considered for large v. small animals

3

Determine obligation on animal owner set forth in statute

- Usually either "permit" or "knowingly permit"

4

Determine if animal owner met the required obligations in the current situation

Pruski v. Garcia

- Case of a bull who escaped pasture and fence, wandered onto a state highway and collided with a car.
- Whether Sec. 143.102 of Tex. Agric. Code prohibition on livestock roaming at large on state highway was in conflict with Wilson County stock law
- Court of Appeals applied stock law broadly when section 143.102 was found not to apply and effectively created a strict liability standard
- Landowner appealed to Texas Supreme Court.
- Texas Farm Bureau, Texas and Southwestern Cattle Raisers Association, and South Texans' Property Rights Association filed an Amici Curiae brief in support of the Landowner's Petition for Review.
- Court sided with Bull Owner in Opinion Issued January 31, 2020.

*Arraby
Properties,
LLC v.
Brown
(2023)*

Brown hit a cow on State Highway 225 in Harris Co.

Ybarras lived on 6 acre farm nearby where they kept a pet cow

Ybarras deeded property to Arraby Properties but continued to live on farm

Brown initially sued for negligence and gross negligence for “knowingly permitting the cow to run at large on the State Highway”

*Arraby
Properties,
LLC v.
Brown
(2023)*

Fencing around Arraby property, which the Ybarras maintained

What evidence of “knowingly permitting” livestock to run at large?

Trial Court held: Arraby liable

Court of Appeals: Reversed

Duty – Arraby had no duty to Brown. Duty owed by owner of cow not owner of land. No evidence that Arraby was responsible for the cow.

Knowingly Permit –

- Statute does not impose duty to prevent all escapes of fenced animals
- No evidence that fence was not maintained or was in disrepair at time of accident

Mullins v. McWhirter

(Oct. 30, 2025)

- Motorcycle collided with a black cow on a U.S. highway at night and motorcyclist was killed
- Jury found owner of the cow liable
- Court of Appeals reversed finding the evidence legally insufficient to support finding that cow's owner "knowingly permitted" it to traverse or roam at large, unattended, on the right-of-way of a highway
- The Court applied the *Pruski* and *Arraby* decisions
- The court distinguished between "should have known" negligence standard and "reasonable certainty" standard to determine whether the owner "knowingly permitted" the cow to run at large
- Court emphasized liability is imposed against livestock owners that knowingly permit their livestock to roam at large as a "matter of course"
- Court of Appeals found the evidence was insufficient to hold the owner of the cow liable under the "knowingly permit" standard

Liability for Livestock on Neighboring Land

- Are you in an open range or closed range county?
 - In open range, landowner is responsible for “fencing out” and there is no duty on the livestock owner to prohibit animals from running at large.
 - In closed range, livestock owner has a duty to prohibit animals from running at large.
 - If livestock owner “permits” animals to run at large, can be liable.

Tex. Agric Code 143.028 defines “adequate fence.”

- Barbed wire—at least 3 strands on posts no more than 30' apart with stays between every 2 posts.
- Picket fence—pickets not more than 6" apart.
- Board fence—at least 3 boards not less than 5" wide, 1" thick.
- Rail fence—at least four rails.



The Law of Estrays

- If stray livestock are on your property, you may not keep or sell them.
- Tex. Agric. Code 142 governs “estrays.”
- Landowner must call sheriff “as soon as reasonably possible.”
- If no owner found within 5 days, sheriff will impound.
- “Redemption payment” imposed in favor of landowner and sheriff.
- Sheriff posts notice and conducts “diligent search” for owner.
- If owner not found, sheriff may sell animal at public auction.

No “Finders, Keepers” on Livestock

- *Thompson v. State*
- 2021 case out of Tom Green County
- Thompson found three cows standing outside his garage. Although advised by his neighbor to call the police, he opted to keep the cows saying they looked “tasty” and that he was going to pen them up, feed them and butcher them.
- He moved the cows to an 18-acre tract he owned down the road. His tenant on that property noticed the cows were branded and called TSCRA.
- Thompson was charged with theft of cattle. He was convicted and sentenced to 5 years in prison (suspended) and \$5000 fine.

Estray Laws

- Chapter 142, Texas Agriculture Code
- December 4, 2019 Attorney General Opinion Issued
- Question sought clarification on a county sheriff's authority to enforce the estray laws in an open-range area of the state.
- Attorney General found that Estray Laws do apply in open-range areas
- "Estray laws give real property owners and occupiers recourse against animals straying onto their land"
- "Chapter 142 authorizes estray procedures for an animal discovered 'roam[ing] about the property of a person without that person's permission or roam[ing] about public property' and does not distinguish between property located in an open-range area or in a stock-law area."



FIVE STRANDS:

A Landowner's Guide to Fence Law in Texas

TEXAS A&M
AGRILIFE
EXTENSION

James D. Bradbury PLLC



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Landowner Liability

Farm Animal Liability Act



Landowner Liability - The Big 3

- Recreation Use Statute (Ch. 75, Civil Practice & Remedies Code)
- Agritourism Statute (Ch. 75A, Civil Practice & Remedies Code)
- Farm Animal Liability Act (Ch. 87, Civil Practice & Remedies Code)

Chapter 75 – Peace Officers/Trespassers/Third Parties

Landowner/Lessee not liable for damages arising from incident/accident involving livestock of landowner/lessee regardless of whether damage occurs on landowner/lessee's property, due to:



Owner, lessee, or occupant of agricultural land is not liable for any damage or injury to any person or property, regardless of whether damage or injury occurs on the land, that arises from:



Owner, lessee, or occupant of agricultural land is not liable for any damage or injury to any person or property that arises from the actions of an individual who enters or causes another person to enter the agricultural land without the permission of the owner, lessee, or occupant because of:



Actions/Omissions of a peace officer or federal law enforcement officer;

Actions/Omissions of a trespasser who enters land;

Actions/Omissions of a third party who, without the landowner's, lessee's, or occupant's express or implied permission, damages a fence or gate on the land, including damage by vehicle;

Wildlife or act of God.



Farm Animal Liability Act, Ch. 87, CPRC

- Amended in direct response to *Waak v. Rodriguez*
- Enlarged the categories of activities covered by “Engages in a farm animal activity”
- Added a definition for “Farm” to include any real estate, land area, facility, or ranch used wholly or partly for raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, agricultural, apicultural, or aquacultural operation
- Added farm owner or lessee as a potentially protected party
- Added independent contractor or employee to definition of “participant”
- Warning Sign Required

Farm Animal Liability Act

- Statute provides that a farm animal owner is not liable for injuries caused by an inherent risk of a farm animal activity
- There are exceptions, for example:
 - Defendant provided an animal to the person and didn't make a reasonable and prudent effort to determine ability of participant to safely engage in the activity and to safely manage the animal

Farm Animals

- Equine animal
- Bovine animal
- Sheep
- Goat
- Pig or hog
- Ratite, including an ostrich, rhea, or emu
- Chicken or other fowl
- A honeybee kept in a managed colony





Farm Animal Activity



- Extremely broad definition, including:
 - Farm animal show, fair, competition, performance, rodeo, event, parade
 - Training or teaching activities to a farm animal
 - Owning, raising, boarding, or pasturing a farm animal
 - Riding, inspecting, evaluating, handling, transporting, loading, or unloading a farm animal belonging to another, without regard to whether the owner receives monetary consideration or other thing of value for the use of the farm animal or permits a prospective purchaser of the farm animal to ride, inspect, evaluate, handle, load, or unload the farm animal
 - Assisting in or providing animal health management activities including vaccination
 - Assisting in or conducting customary tasks concerning farm animals
 - Transporting farm animals
 - Feeding, vaccinating, exercising, weaning, herding, corralling, branding, dehorning
-

WARNING

UNDER TEXAS LAW (CHAPTER 75A, CIVIL PRACTICE AND REMEDIES CODE), AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AN AGRITOURISM ACTIVITY.

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A FARM ANIMAL PROFESSIONAL OR FARM OWNER OR LESSEE IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN FARM ANIMAL ACTIVITIES, INCLUDING AN EMPLOYEE OR INDEPENDENT CONTRACTOR, RESULTING FROM THE INHERENT RISKS OF FARM ANIMAL ACTIVITIES.



1-800-242-7820

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James D. Bradbury, PLLC



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