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Farmers’ Liability for Their Animals

An animal owner can be subject to legal liabilities for acts of animals owned as part of a farm enterprise or even as pets. This guide discusses some of the situations where liability may be imposed on an owner for acts of an animal.

The law recognizes two general classes of animals: wild and domestic. Animals such as farm livestock that are ordinarily harmless to people are classified as domestic animals. Ownership of domestic animals carries certain legal liabilities. The following examples will be discussed to demonstrate the nature and extent of the possible legal consequences arising from the acts of such animals:

1. Your cattle break through a fence along a road and damage your neighbor’s corn.
2. You drive your herd back to your land by way of a public highway and one of the animals is struck by a car.
3. You discover that your herd is diseased, and through your lack of care the disease spreads to your neighbor’s herd.
4. Your dog, while off your property, kills sheep belonging to someone else.
5. Your watchdog attacks a salesperson who comes to call.
6. Your dog, which is very friendly, jumps up to greet a visitor. The visitor is frightened and falls off the front porch.

Lawsuits can and do arise in such situations. By studying these examples, you can learn how to protect yourself from the cost and unpleasantness of a lawsuit. At the same time, you can learn about your rights when you are subject to acts of animals belonging to others.

The information in this guide is for educational purposes only and is not a substitute for competent legal advice.

This guide contains only general statements of the law based on limited sets of facts. Consult with your attorney if you are faced with a specific situation. Your attorney can get all the facts of the case and act upon them in your best interests.

Damages done to a neighbor’s crops

Responsibility for acts of domestic animals is determined to a large extent by the fencing laws of Missouri. Under the old open range system, domestic animals were free to roam at will. If a farmer wanted to grow crops or make some other use of owned land, it was the farmer’s responsibility to fence out domestic animals. If the farmer failed to do so and subsequently suffered a loss, there was no liability on the part of the animal owners.

This open range system continued to be the law in some parts of Missouri until Jan. 1, 1969. At that time, the General Assembly declared the open range system to be at an end and made Missouri a closed range state. Under a closed range system, which is the current law, owners must fence in or restrain their animals on their own land. Failure to fence in or restrain animals can lead to owner liability for damages caused by wandering animals.

Under the state’s current fence laws, whether or not you are liable to your neighbor for damages caused by your animals depends on where and how your animals entered the neighbor’s property, and if you were negligent in your efforts to fence in your animals. The Missouri law recognizes two classes of fences: exterior fences and division fences. An exterior fence refers to any fence other than one located on the boundary line between two adjacent landowners. For example, a fence along a road, stream or railroad is an exterior fence. A fence between two adjacent landowners is a division, or boundary, fence (Figure 1).

If your animals cross one or more exterior fences, as in the first example, you are liable for damages that the animals cause if you were negligent [Missouri Revised Statutes (RSMO) section 272.030]. Negligence would be determined by a court, but generally means that you failed to do something that an ordinarily careful person would have done. These are some examples:

- The fence does not meet minimum standards.
- Livestock left their enclosure because they were not being fed.

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Figure 1. Cattle behind a boundary fence.

- Livestock repeatedly get out of the fence.
- Water gaps were not being repaired in a timely manner.

The local option fence law (RSMO 272.210 to 272.370) currently in place in 19 of Missouri's 114 counties does not specifically mention liability for damages for animals escaping through exterior fences, but any damages would have to be related to negligence as well.

Liability related to division fences depends on several factors. Under the updated general fence law, currently in place in 95 Missouri counties, liability for damages depends on who has livestock and which side they got out of. If only one person sharing the fence owns livestock, then that person would be totally responsible if proven to be negligent. If both people own livestock, then which portion of the fence the animals got out through and whether their escape was due to negligence would need to be determined. See MU Extension publication G810, *Missouri Fencing and Boundary Laws*, to determine what fencing law is in place in the counties in which you own land.

Under the local option fence law, the only way to be awarded damages *appears* to be to prove negligence on the part of the livestock owner, although nothing in the statute itself allows for damages. Even if you do not own livestock, half of the fence is your responsibility. Not maintaining your portion of the fence would likely lower or negate your chances of proving your neighbor negligent.

In the updated general fence law counties, maintenance of a division fence is established in the law (RSMO section 272.060). The law states that you must maintain the half of the division fence that lies to your right when facing the fence at its midpoint and your neighbor must maintain the half to your left (also known as the right-half rule). Any agreement between you and your neighbor that differs from the law must be in writing and recorded in all of the counties in which the fence lies.

In the 19 counties currently under the local option law, the right-half rule is the tradition and not the law. Any agreements other than that should be in writing to prevent conflict and confusion later on. Not only is it advisable to have the fence maintenance agreement in writing, but it is also advisable to have the agreement made a matter of public record by recording it in the recorder's office of each county the fence is in. In the absence of an agreement or witnesses to the contrary, you must maintain the half of the division fence that lies to your right when facing the fence at its midpoint and your neighbor must maintain the left half.

What to do with trespassing animals

If your neighbor's livestock trespass on your land, you have several alternatives, but in *no* case do you have the right to kill the animals merely because they have trespassed.

If the animals come through a division fence, then your first and best course of action is to drive the animals back onto the owner's land. If you are unsure whose livestock they are, you can publish a notice in the local newspaper. If you do not get a response from the owner, you can contact the county sheriff (RSMO section 270.010).

Another action you may take is to distrain the animals, but only in the case of a non-boundary fence (road or stream). Distrain is a legal term that means you can impound the animals and hold them until you are paid for the damages they caused. To have the legal right to impound the animals, you must possess the land or be an agent of the person in possession. The animals must be domestic and must be captured in the act of doing damage or under circumstances that show they had done damage recently.

Only a small amount of damage is needed to justify impounding, but the impounder must use ordinary care in keeping the animals — that is, care for them as if they were his or her own — and can make no use of the animals except to preserve them. For example, it would probably be permissible to milk dairy cows but not to use a horse for chores.

The owner of impounded, or distrained, cattle may get the animals back by paying a reasonable cost for the animals' care plus the damages they inflicted. Reasonable costs to care for an animal would include feed, pasture, and any veterinarian visit and medicine required. If the owner and the impounder cannot agree on the amount of damage, Missouri statutes provide for judicial action to resolve the dispute (RSMO section 271.050).

Animals on the highway

Generally, animals are on the highway either because they strayed from confinement or because they were being driven along or across the highway. Several variations of liability can arise in this context.

If you are negligent in maintaining your fences and allow your animals to escape onto the highway, your liability exposure is increased. If a motorist using the highway collides with such animals, you can be liable provided the driver was not negligent. You are also liable if your fences are in good repair but you keep animals you know are capable of jumping or breaking out of them.

You might also be found liable even when your fences are adequate and in good repair and animals that are not known to be capable of breaking out do escape. If you know the animals have escaped and you fail to remove them from the highway within a reasonable time, you could owe damages to people on the highway who are harmed. Again, the theory behind your liability is based on negligence — failing to drive the animals off the highway under circumstances when a reasonable and prudent person could have foreseen a risk of injury to motorists or others.

If your cattle escape and cause damage but you are not negligent, Missouri law may still impose liability upon you. Other states impose liability for damage caused by animals regardless of the innocence of the owner.

In the past, Missouri courts have said that if animals stray onto a highway and are involved in an accident, the law presumed that the animal's owner was negligent – and therefore liable for damages. The update on RSMO section 272.030 and nonmention in the local option portion of the law reverses that presumption: the burden of proof in cases when animals get out of an enclosure, or fence, and cause an accident now falls on the person damaged or harmed by the animals. To avoid liability in such a situation, you would need to prove that you were not negligent, or that the driver of the motor vehicle was negligent and the driver's negligence was a contributing cause of the accident.

In the second example in the introduction, the animals were not strays but rather were being driven along the highway. In this situation, and all others where negligence is the issue, the law says the owner of the cattle must use the degree of care that would be exercised by a reasonable and prudent person under the same or similar circumstances. More simply stated, the owner must avoid creating an unreasonable risk of harm to others.

Thus, in the example, the owner must use that degree of care necessary to control the herd when driving them along the highway. Various conditions can raise or lower the degree of care that is required: daylight vs. nighttime, good vs. poor visibility, light vs. heavy traffic. In some situations, very little danger is involved; in others, one might be negligent in having a herd on the road no matter how much care was used. The best advice is to assess the situation and use good judgment in deciding when and where to drive your cattle, and what methods to use to warn approaching motorists.

Animals generally are allowed to be driven along roads except where local ordinances forbid the practice (RSMO section 270.070). This privilege generally carries an immunity for casual trespass on private land along the highway. However, this immunity applies only to property alongside the road and not to property damaged by animals straying from the road. Once the animals stray from the road, the animal owner is liable for negligence in failing to pursue them promptly and herd them back onto the road.

Permitting a communicable disease to spread

The third example presents the problem of animals spreading communicable disease. The owner of animals suffering from a communicable disease, who has knowledge of their condition, has the duty to use reasonable care to prevent them from transmitting the disease to other animals or to people. If, by reason of the owner's negligence, they are permitted to communicate the disease, the owner is liable for the resulting damage.

A person may also incur liability by renting out land that has become infected through use by diseased livestock if reasonable care has not been used to discover and correct the condition. Reasonable care must also be used in disposing of infected food and litter.

Liability for a rabid dog is outlined specifically under Missouri law. The owner of a rabid dog or the owner of another dog that has fought with or been exposed substantially to a rabid dog must either kill it, impound it or have it immunized. Failure to do so is a misdemeanor and is punishable by a fine of $100 to $500. The owner is also liable for damage caused to others because of his or her failure to take one of the above steps (RSMO section 322.080).

Missouri has laws that regulate the disposal of dead animals. These laws apply whether death was by disease, accident or natural causes. The law requires every person owning or caring for an animal that has died to dispose of the carcass within 24 hours after learning of the death.

An owner may dispose of the dead animal personally or call on a person licensed by the state to dispose of or transport dead animals. The owner may dispose of the carcass by burying it, with certain restrictions, including that no part of the animal is less than 6 feet below ground level (RSMO section 269.020).

Livestock owners can also compost dead animals in an approved composter. (RSMO section 269.020(5)). Composting works well, especially for animals such as poultry and swine.

Missouri law prohibits the disposal of a dead animal by burning, cooking or any method other than burial, except at a licensed disposal plant. The purpose of this law is to regulate commercial rendering plants. The law does not prohibit owners from disposing of carcasses in any reasonable manner, such as burying or composting, on their own land. Although Missouri law permits substantial latitude in the manner of disposal, an owner should always ensure that the chosen method of disposal does not create a nuisance.

Certain situations concerning dead animals are exempted from the coverage of the laws regulating the disposal of dead animals. Some of these exempted situations involve animals killed solely for human consumption; persons transporting or dealing in hides and skins; and dead fowls, birds, fish, reptiles or small animals such as dogs, cats and small game.

Further information and clarification on dead animal disposal is available in MU Extension publication WQ216, *Dead Animal Disposal Laws in Missouri*.

Injuries caused by dogs

The last three examples cited in the introduction concern dogs. Dogs, of course, are not the only animals that might cause physical injuries to others for which the owner must respond in damages. For the most part, however, the law is more precise with regard to dogs because more court cases have involved injuries caused by dogs. However, except where noted, the concepts discussed and applied here to dogs could apply equally well to cattle, horses, sheep, fowls and other domestic animals.

Dogs occupy a rather unique position in the law. Their legal status is placed somewhere between wild animals and domestic animals. They are looked upon as somewhat more dangerous than other domestic animals. Therefore, an owner is more likely to be held liable for the injuries dogs inflict. On the other hand, dogs are not presumed to do damage by their trespasses as are other domestic animals and, therefore, cannot be impounded and held for damages — unless they actually are causing or have caused substantial damage to the property of the impounder.

Injuries to other domestic animals

Per the fourth example given in the introduction, a dog caught in the act of killing or maiming sheep — or any other domestic animals, livestock in particular — may be shot on sight unless the dog is on the premises of its owner (RSMO section 273.030). The justification for this rule is that the owner of the sheep or other domestic animals is entitled to protect against similar damage in the future (RSMO section 273.020). Also, once a dog starts injuring livestock, it is not likely to change or stop that behavior.

Personal injuries

There are two theories under which an animal's owner can be liable for personal injury – strict liability and negligence. Strict liability simply means the animal's owner is automatically liable – it does not require a showing of fault or negligence.

The key elements in the case of personal injuries inflicted by animals on a strict liability theory are

- A vicious propensity on the part of the animals
- The owner's actual or constructive knowledge of such a vicious propensity

A vicious propensity is a tendency of an animal to do any act that might endanger the person or property of another in a given situation. Knowledge of a vicious propensity and failure to restrain the animal properly in light of that knowledge renders the owner liable for the damages caused by such animal.

If the animal has strayed from the owner's premises to the property of another, the knowledge element appears to be a less stringent requirement in holding the dog's owner liable. The reasoning being that the animal has gone to a place where it has no right to be, and the owner has thereby violated his or her duty to restrain it. Therefore, the owner should pay for any damage caused because he or she failed to restrain the dog.

The knowledge requirement raises another legal difference between wild and domestic animals. With respect to a wild animal, the owner usually is presumed to have knowledge of the vicious and dangerous characteristics of the animal. However, in the case of a domestic animal, there is no such presumption. The owner is liable for a domestic animal's actions if

- The animal had actually been vicious or had a tendency to injure persons through its prior actions
- The owner had knowledge of these tendencies and inclinations

The owner of an animal with vicious propensities has a duty to either kill it or restrain it so that it may not do the harm that its vicious nature threatens. If the owner keeps such an animal with knowledge of its inclination to do harm, the owner does so at his or her own risk. The early law said that liability for injuries inflicted by animals was based on negligence. Now, however, the basis of such actions is not negligence in the manner of keeping the animal, but the fact that the animal is kept at all. The owner is now strictly liable for all injuries caused by such an animal – no showing of negligence is required.

Early law also held that before a dog needed to be restrained, it was entitled to its first bite; that is, the dog actually had to injure someone before the owner was required to exercise caution in keeping it. The law of Missouri has since changed, and this first-bite rule is no longer the law.

If a dog has a menacing disposition and snarls at people, the owner probably has a duty to restrain it because it has a vicious propensity — a tendency to do harm. A dog who has bitten someone only after being teased or otherwise treated with cruelty would probably not need to be restrained by the owner. Here again, you must use a degree of care which would be exercised by a reasonable and prudent person under the same or similar conditions.

Injuries to people visiting your property

Example five in the introduction describes a situation in which a watchdog bites a visiting salesperson. At the outset, we must agree that a dog is used as a watchdog because of its vicious propensities; it is used as a watchdog because of the possible harm, or at least threat of harm, it may do an intruder.

As a general rule, the right to keep a dog for protection shields the owner from liability to a person who incautiously enters the owner's premises at night, even if the person enters the property for a lawful purpose. If, however, the owner permits that same dog to be at large on the premises during the daytime and a person is injured by it, the owner is liable, even though the injured person is at the time a trespasser.

In the example, if the salesperson is a trespasser, you may require him or her to leave, and you may use reasonable force in so doing. However, if the salesperson is on the premises for a lawful purpose and your watchdog creates an unreasonable risk of harm, you may be liable if the salesperson is injured by the dog.

The last example shows how broadly the law defines a vicious propensity. We usually think of a vicious animal as being fierce, savage, dangerous or untamed. But in determining one's legal liability, we must look to legal definitions.

Legally, an animal is vicious or has vicious propensities if it tends to do any act that might endanger the person or property of others in a given situation. Therefore, if a person knows that his or her dog is friendly and tends to jump up to greet people, that owner has sufficient knowledge of the vicious propensities of the dog and is liable for injuries caused by such behavior. Thus, legally, even an overly friendly dog may be looked upon as vicious.

In addition to strict liability discussed above, a dog owner can still be liable for injuries on a theory of negligence. In other words, even if your dog is not dangerous, you still have a duty to exercise ordinary care in keeping your dog – such as obeying local leash laws.

Summary

Animals are divided into two classes: wild and domestic. As a general rule, you have no duty to restrain wild animals still in their natural environment. However, you must restrain or confine your domestic animals in such a manner as not to create an unreasonable risk of harm to others.

When the law places a duty of reasonable care upon you, people who may be injured by your animals must also exercise reasonable care for their own safety. If they fail to exercise this degree of care, you may use this failure as a defense if they should sue you for their injuries.

However, if the law places an absolute duty on you to protect others from injury, the injured party's failure to exercise reasonable care cannot be used by you as a defense to escape liability. Thus, the magnitude of your legal duty may have a significant effect on the outcome of a lawsuit.

Under present Missouri law, there is no longer any open range; you must fence in your domestic animals. If they escape through your negligence, you are liable for the damages they inflict. If the animals of another invade your property, you may drive them off your property and back to theirs, if you do so in a reasonable manner. If they do damage, you may impound, or distrain, them and hold them until the owner pays for the damage.

In driving animals along or across a public highway, you must use reasonable care to avoid harm to motorists and others on the highway. You should plan such operations carefully, taking all circumstances into account. The use of warning devices will put motorists on notice of the danger and may reduce the risk of liability.

If your animals become diseased, you must use reasonable care to avoid the spread of that disease. You also can incur liability by renting infected premises or by carelessly disposing of infected feed and litter. Rabid dogs or dogs exposed to rabies must be killed, impounded or immunized. Dead animals must be disposed of according to the rules that the law prescribes, and their disposal must not be allowed to create a nuisance.

If you own an animal that you know has a vicious propensity, or tendency to do harm, you are under a duty to kill it or restrain it in such a way that it cannot cause the harm threatened. Failure to do so makes you liable for resulting damages. Remember that vicious propensity is defined quite broadly by the law.

Other information

The information contained in this guide is only a general statement of law about liability with regard to animals. If you have specific questions about liability as an animal owner, you should discuss them with your attorney.

This guide was reviewed and edited by R. Caleb Colbert, Lawyer, Haden & Colbert.

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