

Law On The Livestock Farm

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The primary function of laws is protection. Also, they provide certain guides for dealing with others.

Observance of the principles herewith outlined will help avoid legal difficulties and losses. When the stockman is contemplating business deals involving questions about which there are uncertainties, however, he should consult a reliable attorney. Observance of the latter point is important, for "ignorance of the law excuses no one." Also, it is generally recognized (1) that attorney fees are cheaper than a court trial, and (2) that, when differences of opinion exist, it is usually less expensive and more satisfactory to compromise than to take the question to court.

LEGAL DOCUMENTS

In addition to leases, some other legal documents are: Bill of Sale, Chattel Mortgages, Uniform Commercial Code (U.C.C.), and Syndicated

Animals (partnerships).

Bill of Sale

This is a document given by a seller to a buyer, establishing the fact that legal title has passed hands to the new owner; and by the bill of sale the seller warrants that he is the owner or agent for the owner and has the lawful right to sell the property, that the property is free of encumbrance, and that he will defend the buyer's title. Such bill of sale should be received in the purchase of livestock and equipment. In many states, the title certificate replaces a bill of sale for all licensed vehicles such as trucks and automobiles. Also, in certain states the brand slip comprises the identification of animals with a bill of sale.

Chattel Mortgages

Stockmen frequently use short-term credit to finance livestock (especially feeder cattle and lambs), crops, and equipment and supplies. The chattel

mortgage is the most common form of security for such loans. It allows the debtor (mortgagor) possession and use of mortgaged chattels (personal property) and at the same time gives to the seller or lender (mortgagee) a security interest superior to the rights of purchasers or transferees of the mortgagor, regardless of the actual knowledge of such persons concerning encumbrances on the chattel. It enables farmers to obtain loans because it gives the lender a high type of security.

The following facts about chattel mortgages are important:

1. They must be recorded within the time and in the manner provided by state law; they must be prepared and signed in accordance with state law; and they become effective when not renewed or foreclosed within the time specified by law.

2. They must contain an accurate description of the property mortgaged.

3. They usually (in most states) attach to progeny born of mortgaged females.

4. They do not attach to crops until the seed is in the ground unless the state law provides otherwise.

5. They are good on feed, seed, or fertilizer if the same mortgage includes animals to which the feed is fed, or the crop on which the seed and fertilizer are used.

6. They prohibit the sale of mortgaged chattels without the consent of the mortgagee. If they are sold without consent, the buyer does not acquire title and the mortgagor is subject to penalty. The mortgagee then may recover the property from the purchaser or the purchaser's transferee, and may recover damages from the mortgagor. Also, many states stipulate that it is a crime to dispose wrongfully of mortgaged property.

7. They differ from state to state. Accordingly, the appropriate state law must be studied thoroughly by those whose business requires the use of chattel mortgages.

Uniform Commercial Code (U.C.C.)

In recent years, most states have adopted the Uniform Commercial Code. It allows such security instruments as chattel mortgages and conditioned sale contracts to be replaced by a single security agreement that creates a security interest in personal property. The old instruments maybe used, but their effect will be to create a security interest.

In those states having the Uniform Commercial Code, the form required by the particular state must be filed in compliance with the state law.

The Uniform Commercial Code can be used to integrate all the financial needs of the farmer in one transaction. The approval of future advances and provision for after-acquired personal property as collateral will give flexibility to farm production financing.

Syndicated Animals (Partnership)

Like livestock leases and father-son farming plans, syndicated animals are a form of "farm partnership." Such animals may be owned by two or more partners. In a syndication, liability is mutually shared; that is, all parties are mutually or fully responsible for the liabilities of the syndicate. However, the syndicate is not liable for personal, as distinct from syndicate, debts. Syndicate agreements may be written in practically any form desired by the partners. For example, the services of

a syndicated sire and the expenses for his keep may be shared according to shares (investment) just as contributions to any other partnership in the form of capital, labor, and management may be shared in any proportions.

LEGAL ASPECTS OF FENCING

Most states have laws pertaining to boundary fences. In some states, however, the fencing regulations are left largely to the counties and townships. Although these laws vary greatly from state to state and are subject to frequent change, the following conditions usually prevail:

1. **Inside fences**—No stipulations are made relative to the materials used on inside fences (fences other than between boundaries).

2. **Boundary fences**—Usually state laws require every landowner to enclose his land with a fence tight enough and strong enough to turn livestock.

Some states deny the landowner any damages for trespass of livestock if he does have his land properly fenced; whereas other states permit collection of damages for trespass by animals even though the landowner suffering the damages does not have his own land fenced.

It is a rather common point of law that the condition of the fence at the point where the stock passes over or through in trespassing determines whether it is a suitable fence. The fact that it is not high enough at some other point, or that someone left a gate open on the other side of the farm, has nothing to do with the case. Thus, the argument is settled solely by the condition of the fence at the place where the animals went through, and not by its condition at any other place.

Although state laws vary rather widely, the predominant decisions of state courts on various situations involving livestock and fences are as follows:

a. When the livestock owner has good fences, is not aware that his animals habitually break out, has not been negligent, and makes an immediate attempt to get them back when they do break out, he is not liable for damage caused by them.

b. When animals break through an adjoining owner's part of a division fence, and such fence is not good, the owner of the animals cannot be held liable for damages inflicted by their trespass.

c. The owner of animals may be held liable for damages inflicted by

their trespass provided—

(1) His animals are known to be in the habit of breaking out, regardless of how good the fences may be.

(2) His fences are not good.

(3) He has caused their trespass through negligence, such as by leaving a gate open, or by stampeding animals until they break out.

3. **Misdemeanor**—In some states, if anyone willfully or negligently (a) leaves open or tears down a gate provided for the convenience of the public, (b) tears down a fence on another person's property, or (c) allows livestock to run at large, the act is classed as a misdemeanor. Upon conviction, such person is subject to fine or imprisonment, or both.

4. **Responsibility for division fences**—The responsibility of neighbors for the construction and maintenance of boundary or division fences is the subject of frequent controversy.

Where the partition fence extends north and south, custom decrees that the owner whose land is east of the fence must build the north half, and the owner whose land lies on the west side of the fence must build the south half.

Where the partition fence extends east and west, the owner whose land lies north of the fence builds the west half and the owner whose land lies south of the fence builds the east half. A simple customary rule regarding the apportionment of a division fence is one which gives a responsibility to the landowner for that portion of the fence which is on his right as he stands on his own property and faces the fence. Where landowners agree to some other division, the agreement should be put in writing, acknowledge before a Notary Public, and recorded by the County Recorder.

5. Railroad fences—Railroad companies are generally required by state laws to construct and maintain fences along their rights-of-way, provided the land adjacent thereto is otherwise enclosed. Also, they are required to maintain at road crossings cattle guards sufficient to prevent stock from getting on the railroad. When such fences and guards are not constructed and maintained properly, the railroad company may be liable for all damages which may be done by its trains.

6. Check state laws—Before constructing a boundary fence, the farmer or rancher should first examine with care the state laws in order to make certain that he is complying with the legal requirements.

Many states have legal fence statutes which settle the question as to what kind of division fence must be built.

ANIMALS ON HIGHWAYS

Sometimes farm animals get out on highways. If, under these circumstances, a user of the highway runs into a loose animal and is injured and/or has his vehicle damaged, he frequently tries to collect damage from the owner of the animal. Although state, county, and/or township laws vary, and it is not possible to predict with accuracy what damages, if any, may be recovered in particular instances, the following general rules apply:

1. If a farmer or rancher is negligent in maintaining his fences and allows his animals to get on the road, he can be held liable for damage resulting to persons using the highway.

2. If a farmer or rancher has good fences that are well maintained, but has one or more animals which he knows are in the habit of breaking out he may be held liable for damages caused by such animals.

3. If animals get on to the highway despite the facts that there are both good fences and no animals that are known habitually to get out, the owner

may be held liable for any damage inflicted provided he knew that the animals were out and made no reasonable effort to get them in.

4. If the farmer or rancher is not negligent in any way, he may or may not be judged liable for the damage inflicted by his animals, depending on the state law and other circumstances.

5. If a farmer is driving animals along or across a highway, he is not likely to suffer liability for any damages unless it can be proved that he was negligent. Stock-crossing signs usually increase the caution exercised by motorists, but do not excuse a farmer from exercising due care.

6. In some states, laws provide that a farmer may, under the supervision of and with varying amounts of assistance from highway authorities, construct an underpass for his animals and for general farm use.

TRESPASS BY ANIMALS

Livestock owners who do not use reasonable care in restraining animals may be held liable for damages caused by their trespassing. Among the kinds of damages for which the courts have held that the owner may be responsible are:

1. The destruction of growing crops.
2. The transmitting of disease

3. The breeding of females by trespassing sires.

The amount of damages in such cases is based on the difference in value to the owner between the actual progeny and the intended progeny. Damage may be considered where the female is a registered purebred and the culprit is a scrub.

Generally state laws stipulate that the owner of land on which animals are trespassing may do anything reasonable to terminate the trespass, including the following:

1. Drive them back to the place from whence they came.

2. Call the owner and ask him to get them.

3. Confine, feed, and care for the animals until the owner comes and takes them; collect costs for same.

HANDLING ESTRAYS (STRAYS)

An estray is usually defined as a domestic animal (not including dogs or cats) of unknown ownership running at large. In some states, poultry at large may be regarded as other straying animals and may be taken up to prevent damage.

Although there is no uniformity in the state laws governing the handling of estrays (strays), some of the more common provisions are:

1. That either (a) landowners, or (b) local authorities may confine such animals and care for them.

2. That following confinement of estrays, a reasonable attempt must be made to locate the owner. Some laws specify public posting and the giving of notice in local papers.

3. That the taker-up is entitled to make reasonable use of estrays while they are in his custody; for example, work a horse or milk a cow.

4. That upon coming for estrays, the owner must satisfy the claims of the taker-up for feed, housing, care, and other costs.

5. That if the owner does not claim his animals, they either (a) become the property of the taker-up, or (b) must be sold at public auction, with reimbursement made to the taker-up for expenses incurred and with the balance turned in as county funds.

AGISTERS

The term agister is taken from English law. *It refers to one who pastures, feeds, or cares for the livestock of another for hire.*

Most states possess lien laws in favor of agisters. Such laws generally provide that agisters shall have a claim

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against the animals for agreed or reasonable charges, and that such claim may be enforced by retention and sale of enough animals to satisfy it. Unless the law so states, it is usually assumed that the lien expires when possession of the animals terminates.

In order to be entitled to lien consideration, the agister must keep his premises properly fenced, take reasonable precautions against injury to animals, and provide suitable feed, water, and shelter. Also, in case of death or injury loss due to neglect, such as from feeding poisoned grain, the agister is liable if he knows or should

have known of the circumstances.

Although interpretations have varied, generally the courts have established that the following rules shall prevail:

1. **That the agister must have the animals in his possession**—To be entitled to a statutory lien, the person claiming it must have the animals in his charge and under his control. Thus, commercial feed companies are not entitled to a lien on the basis that they supply feed on credit.

2. **That there must be a signed or implied agreement**—To be entitled to a lien, there must have been an agreement, either signed or implied,

covering their pasture, feed, and/or care.

3. That a security agreement shall take precedence—A security agreement takes precedence over an agister's lien unless—

a. The mortgagee consents to an agreement whereby persons other than the mortgagor shall feed and care for animals, or

b. The mortgage is executed while animals are under agistment.

4. That the agister must give the owner written notice of sale and publicize same—After unsuccessfully requesting reasonable compensation and while still in possession of the animals, the agister must give the owner written notice of the time and place of sale as required by the particular lien statute. Also, there must be due publication of notice. The animals may then be sold, with the agister retaining the amount which he claims and paying the balance, if any, to the owner.

PERSONS INJURED BY ANIMALS

The owner of farm animals may be held liable for personal injuries caused by them under the following circumstances:

1. When he negligently allows or causes them to commit the injury.

2. When he is aware that he owns a vicious animals, and when such an animal inflicts injury upon someone who was not acting negligently.

It is a common-law rule that "a dog is entitled to one bite," and that after that the owner may be liable for injury to others. However, some states have passed laws removing this protection and holding the owner liable for the first attack.

BRANDS AND BRAND INSPECTION

In the range country, brands are used as a means of determining the ownership of animals and of lessening theft. To meet these needs, each of the western states has laws governing the recording and inspection of brands and the transfer of branded animals. These laws generally contain the following provisions:

1. **Recorded brands**—Ranchers are required to register any brand they use, and, after its approval by the Registrar of Brands of the state agency in charge, to use that specific brand on their livestock—usually on cattle, sheep, horses, and mules: (For information relative to types of identification, the reader is referred to Section 8

Management, under the heading, "Marking or Identifying Animals."

2. **Bill of Sale**—When animals are sold, a bill of sale or other written evidence of transfer must be signed by the seller and given to the purchaser.

3. **Local brand inspectors**—Local brand inspectors, usually under the supervision of the state department or

commissioner of agriculture, inspect all animals leaving their district to determine if any are being sold by a person other than the rightful owner.

4. **Inspection of hides**—Frequently there is provision for an inspection of hides at slaughter houses as a further means of disclosing theft and wrongful sale.

5. **Slaughtering in remote places**—Usually the slaughtering of animals in remote places is prohibited, for purposes of lessening theft.

6. **Penalties**—Violations, especially theft and effacing or changing of brands, are subject to severe penalties.

Stockmen operating in those states which have brand laws should become thoroughly familiar with the provisions thereof, and should recognize that law enforcement against rustlers and thieves can only be as good as the existing brands and brand inspection program. In case of suspected theft, the first question that the sheriff is prone to ask is "what brand did the lost animal have?" Unbranded range animals are an open invitation to thieves, and in the case of loss, make for a cold reception from law enforcement officials, for they can be of little help unless there is positive animal identification.

LIVESTOCK OPERATION WHICH MUST BE LICENSED

Although state laws vary, the following livestock and livestock operations are generally subject to license and regulation:

Auctioneers

Auction sale ring operations

Bull lessors
Commission merchants handling
meat, livestock, and livestock products
Dealers of livestock
Dead animal disposal
Dogs
Feed dealers
Horseshoers
Meat dealers
Meat and produce peddlers
Pet dealers
Poultry dealers
Public carriers of livestock
Racetrack operators
Rendering plant operation
Sires for public service
Slaughter house operation
Stockyards (public) operation
Traders (itinerant) of horses and
mules
Veterinarians
Weighing (public) of livestock

LIABILITY

Most farmers are in such financial position that they are vulnerable to damage suits. Moreover, the number of damage suits arising each year is increasing at an almost alarming rate, and astronomical damages are being claimed. Studies reveal that about 95 percent of the court cases involving injury result in damages being awarded.

Comprehensive personal liability insurance protects a farm operator who is sued for alleged damages suffered from an accident involving his property or family. The kinds of situations from which a claim might arise are quite broad, including suits for injuries caused by animals, equipment, or personal acts.

Both workmen's compensation insurance and employer's liability insurance protect farmers against claims or court awards resulting from injury to hired help. Workmen's compensation usually costs slightly more than straight employer's liability insurance, but it carries more benefits to the worker. An injured employee must prove negligence by his employer before the company will pay a claim under employer's liability insurance, whereas workmen's compensation benefits are established by state law, and settlements are made by the insurance company without regard to who was negligent in causing the injury. Conditions governing participation in workmen's compensation insurance vary among the states.

GUIDES TO KEEPING OUT OF LEGAL DIFFICULTIES

Herewith are some guides to keeping out of legal difficulties:

1. **Use written contracts**—Use written contracts instead of verbal contracts whenever possible, because there is less opportunity for dispute later.

2. **Pay for an option**—An option or promise to leave an offer open should always be secured by a small payment; otherwise, the agreement may be

revoked at pleasure.

3. **Require surrender of a note**—Upon paying a note, require its surrender. Otherwise, it may be sold and you may be required to pay it again.

4. **Give adequate warning when lending a treacherous animal**—If a treacherous animal is lent to a neighbor, he should be warned of these

traits; otherwise, the owner may be held liable for any harm or damage that the animal may inflict.

5. **Consider trees on boundary lines as joint property**—Trees standing on boundary lines are the property of both owners, and their disposal must be by mutual agreement. Also, one cannot legally claim fruit from a tree standing upon another man's property even though the branches extend over the boundary.

6. **Be aware of auto passenger responsibility**—If the owner of an auto offers a pedestrian (or hitchhiker) a ride, he may be liable for any injury to him because of careless driving, defective equipment, or any action whereby an accident results.

7. **Pay money only to an authorized agent**—Never pay money to an agent unless you know he is authorized to make collections. When payment is made, be certain to secure a signed receipt.

8. **Pay by check**—Pay debts and bills by check; then there is written proof of payment.

9. **Secure adequate protection through insurance**—In these times of high court judgments, it is imperative that the stockman have adequate insurance protection. Without

such protection, or without substantial wealth, he is at the mercy of the claim-conscious public. A judgment could put him out of business unless he had adequate insurance to cover that judgment.

Most stockmen strive to keep their fences in proper repair, their equipment in satisfactory order, their employees properly educated about the hazards of the occupation in which they are engaged; and to handle their entire operation in a safe and sane manner. Yet, accidents do happen, and, when that time comes, an insurance policy is the answer to the financial part of the problem.

Recently, the insurance industry developed liability policies designed specifically for the farmer and stockman. These policies are blanket-type liability policies designed to cover the farmer's legal liability arising out of his operation of the farm or ranch. Some of the general provisions covered by such policies are:

- a. Liability for bodily injury or property damage to employees or guests.
- b. Medical aid where the policyholder is liable.

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c. Property damage as a result of breachy animals.

d. Liability for accidents on highways and public roads caused by animals.

e. Bodily injury and property damage liability for personal acts of the stockman and his family.

Such policies, being tailored for the actual needs of farmers and ranchers, are quite flexible and can be written to suit each individual's particular needs.

The important thing is that the stockman should take advantage of adequate liability coverage, which can

be obtained at little added cost, for the time is past when one can have a secure feeling with a \$10,000 policy. The high cost of claim settlement and the increased amount of jury verdicts make it desirable that limits of liability be increased. There should be adequate coverage to assure the stockman protection when and if needed and to keep him in business.

10. **Have a will made**—Most important of all, the farmer or rancher should have a will that covers his property and disposes of it in keeping with his wishes. 