CURRENT PROBLEMS (AND SOLUTIONS) IN TEXAS PERSONAL INJURY SUITS INVOLVING MOTORISTS AND LIVESTOCK

M. Shane McGuire[*] *and Brandon E. Beck*[**]

---

* Shane McGuire owns The McGuire Firm, PC, and practices personal injury defense. He received a B.B.A. in Finance from The University of Texas at Tyler in 2000 and a J.D. from Texas Tech University School of Law in 2006.

** Brandon Beck is a Research and Writing Specialist for the Federal Public Defender's Office. He previously practiced civil litigation and civil appellate law. He received a B.A. in Classics from the University of Texas in 2004, a M.T.S. in Biblical and Historical Studies from Boston University in 2007, and a J.D. from Texas Tech University School of Law in 2012.

I. INTRODUCTION

Anyone who has lived in a rural area of Texas has heard the following story: "I was driving home late at night. It was pitch black out, when all of a sudden: Boom! I hit a cow standing in the middle of road. I couldn't see it until it was too late." These situations are not trivial. In fact, a 1,350-pound cow in the road can cause as much damage to an automobile as a serious two-car accident.[1] Sometimes, the driver of the car files a lawsuit against the owner of the cow.[2]

This Article explores the strange legal world of livestock-in-the-road personal injury cases. In Part II, this Article will describe the historical background of ranching regulation in Texas.[3] Part III examines the sources that create duties and obligations for owners of livestock.[4] Part IV looks closely at the source texts to determine when, where, and what the statutes govern.[5] In Part V, this Article discusses the standard(s) of care to which those responsible for livestock are held when their livestock causes injury to a motorist.[6] Part VI considers the proper wording of a jury charge in these types of cases.[7] In Part VII, this Article provides recommendations to the legislature, the Texas Supreme Court, and the State Bar of Texas that would provide clarity to this area of the law.[8] Finally, Part VIII discusses the authors' global conclusions on several of the most troublesome issues.[9]

II. HISTORICAL BACKGROUND

A domesticated animal roaming beyond its owner's pasture is an age-old problem. A theory of owner liability resulting from an animal roaming at large relates back at least as far as the Mosaic Law: "If, however, the bull has had the habit of goring and the owner has been warned but has not kept it penned up

1. Max Hrenda, *Update: Man Killed in Cow Crash Identified*, JOHNSON CITY PRESS (June 28, 2014, 8:21 AM), http://www.johnsoncitypress.com/article/118475/cow-in-road-crash-kills-driver-on-i-26-in-gray#ixzz3BhFxj7Mt.

2. *See* Gibbs v. Jackson, 990 S.W.2d 745, 746 (Tex. 1999) (involving a lawsuit in which a driver sued the owner of the horse his vehicle collided with).

3. *See infra* Part II.

4. *See infra* Part III.

5. *See infra* Part IV.

6. *See infra* Part V.

7. *See infra* Part VI.

8. *See infra* Part VII.

9. *See infra* Part VIII.

and it kills a man or woman, the bull is to be stoned and its owner also is to be put to death";[10] "If anyone grazes their livestock in a field or vineyard and lets them stray and they graze in someone else's field, the offender must make restitution from the best of their own field or vineyard."[11] More recently, in the nineteenth century, English courts recognized a cattle owner's common-law duty to fence livestock.[12] The seminal English case is *Cox v. Burbidge*, in which the court explained:

> If I am the owner of an animal in which by law the right of property can exist, I am bound to take care that it does not stray into the land of my neighbour; and I am liable for any trespass it may commit, and for the ordinary consequences of that trespass. Whether or not the escape of the animal is due to my negligence, is altogether immaterial.[13]

In contrast to the strict liability approach taken by both the Mosaic Law and the English Common Law, Texas, like a few other western states, rejected a common-law duty to fence livestock in favor of a "free-range" approach.[14] Texas's free-range status is rooted in its rich ranching tradition dating back to the Republic when ranchers would drive their cattle across the state in search of grazing and, eventually, a market.[15] While rejecting a common-law duty to fence, the framers of the 1876 Texas Constitution did allow for future modification of the pure free-range approach, as reflected in Article XVI, § 22, which provided: "The Legislature shall have the power to pass such fence laws, applicable to any sub-division of the State, or counties, as may be needed to meet the wants of the people."[16] The framers also allowed for individual counties to regulate fencing and livestock through the passage of county "stock laws."[17] As discussed below, both the Texas Legislature and many Texas

---

10. *Exodus* 21:29 (New International Version).

11. *Id.* at 22:5.

12. *See, e.g.*, Cox v. Burbidge, (1863) 143 Eng. Rep. 171 (C.P.) 171; 13 C.B. (N.S.) 430.

13. *Id.* at 174.

14. Clarendon Land, Inv. & Agency Co. v. McClelland, 23 S.W. 576, 577–78 (Tex. 1893). "Neither the courts nor the legislature of this state have ever recognized the rule of the common law of England which requires every man to restrain his cattle either by tethering or by inclosure. . . . It is the right of every owner of domestic animals in this state, not known to be diseased, vicious, or 'breachy,' to allow them to run at large . . . ." *Id.*; *see* Pace v. Potter, 22 S.W. 300, 301 (Tex. 1893). "It is not contended that the rule of the common law, making it the duty of the owner of cattle to confine them to his own land, . . . was ever in force in this state. It is inapplicable to our situation and the customs and habits of the early settlers of the country, and inconsistent with our legislation in regard to fences and stock." *Pace*, 22 S.W. at 301.

15. *See* Gibbs v. Jackson, 990 S.W.2d 745, 747 n.2 (Tex. 1999) (explaining that in 1840, during the days of the Republic, the Texas Congress voted to allow cattle to run at large).

16. TEX. CONST. art. XVI, § 22 (repealed 2001).

17. *Gibbs*, 990 S.W.2d at 748 ("The Legislature has also provided for local stock laws since 1876, and has repeatedly rewritten the scope of those laws."). Needless to say, when a county passed a stock law, not all ranchers were happy with the limitation on their ability to drive their cattle. *Id.* at 750. In 1883, a drought made it especially difficult for landless ranchers to feed and water their cattle, culminating in the Texas "fence war," in which fencing was cut in over half of Texas counties. Wayne Gard, *Fence Cutting*, TEX. ST. HIST. ASS'N, http://www.tshaonline.org/handbook/online/articles/auf01 (last visited Jan. 13, 2015). The Texas

counties have used their constitutional authority to modify the pure free-range approach.[18]

III. THE SOURCE OF DUTIES OWED BY THOSE WHO OWN OR CONTROL LIVESTOCK

A. No Common-Law Duty to Fence

A significant consequence of Texas's free-range status is that an injured motorist does not have a common-law negligence claim for damages against the owner of livestock that escapes its fence.[19] This is not an oversight, but a conscious decision by the Texas Legislature and Texas courts.[20] The best examination of Texas's history as a free-range state is found in *Gibbs v. Jackson*, which the Texas Supreme Court decided in 1999.[21] In *Gibbs*, a woman was injured when her vehicle collided with a horse on a farm-to-market road in a county that had not passed a stock law.[22] The woman sued the owner of the horse for negligence, alleging that the owner: (1) failed to properly maintain the fence around the pasture, (2) failed to restrain the horse, and (3) failed to prevent the horse from roaming unattended onto the road.[23] The trial judge allowed the case to be submitted to a jury under a common-law negligence theory, and the jury found in favor of the plaintiff.[24] After the appellate court affirmed, the owner of the horse appealed to the Texas Supreme Court.[25]

The issue before the Texas Supreme Court was whether a person responsible for livestock has a common-law duty to ensure that the animals do not stray onto farm-to-market roadways.[26] More broadly speaking, the court was confronted with the question of whether any duty to fence livestock exists in Texas absent a statutory provision that states otherwise.[27] In making its determination, the court first observed that Texas, from its founding, rejected England's common-law rule requiring the fencing of livestock.[28] The court then explained that the Texas Legislature has a long history of regulating

---

Legislature reacted to this practice by passing a penal provision—still on the books today—making it a felony to cut a fence enclosing cattle. *Id.*; *see also* TEX. PENAL CODE ANN. § 28.03(b)(4)(C)(i) (West 2011) (stating that fence cutting is a state-jail felony if the fence held livestock).

18. *See infra* Part III.
19. *Gibbs*, 990 S.W.2d at 750.
20. *See id.*
21. *See generally id.* (discussing common-law and statutory duties in Texas).
22. *Id.* at 746.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* at 747.
27. *See id.*
28. *Id.*

livestock through statute—today codified in the Texas Agriculture Code.[29] These historical precedents imply that the legislature has carefully considered when and where to impose a duty on livestock owners, and that any omissions were intentional.[30] The court concluded that there is no common-law duty to fence livestock in Texas, and that any duties imposed upon an owner of livestock must be through statute.[31] Accordingly, the court reversed and held that the injured driver take nothing.[32]

Interestingly, before *Gibbs* was decided in 1999, the Texas intermediate appellate courts were divided on the issue of whether an injured motorist could bring a common-law negligence claim against an owner of livestock.[33] Since *Gibbs*, however, the appellate courts have fallen into line and now look solely to the Texas Agriculture Code for guidance.[34] As we shall see, these statutory provisions carry their own interpretive complications.

B. Statutory Liability

Although owners of livestock do not have a common-law duty to fence, a person injured in a motor vehicle collision with livestock roaming at large may still sue under the Texas Agriculture Code in order to recover damages.[35] The Texas Agriculture Code provides that someone who owns or controls livestock does have a duty to restrain animals in certain circumstances.[36] The relevant statutory provisions are located in Chapter 143 and can be grouped into two categories: (1) the "highway provision," which applies statewide irrespective of local legislative action;[37] and (2) the "stock law provisions," which are inactive until triggered by the passage of local stock laws by an individual county or subset thereof.[38]

---

29. *Id.*

30. *Id.* at 749–50.

31. *Id.* at 750.

32. *Id.*

33. *See, e.g.*, Merendino v. Burrell, 923 S.W.2d 258, 261 (Tex. App.—Beaumont 1996, writ denied) (recognizing a common-law duty to exercise ordinary care in the fencing of livestock), *disapproved of by Gibbs*, 990 S.W.2d 745; *see also* Miller v. Cozart, 394 S.W.2d 22, 24 (Tex. Civ. App.—Dallas 1965, no writ) (holding that the victim provided sufficient evidence for a showing of negligence against the livestock owner), *disapproved of by Gibbs*, 990 S.W.2d 745.

34. *See* Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874, 876 (Tex. App.—Beaumont 2010, no pet.) (citing *Gibbs*, 990 S.W.2d 745) (discussing the proposition that there is no common-law duty to restrain livestock in Texas).

35. *See* TEX. AGRIC. CODE ANN. §§ 143.021, 143.033 (West 2004 & Supp. 2014), 143.022–.028, 143.034–.077; 143.082–.104; 143.106–.123 (West 2004); *Gibbs*, 990 S.W.2d at 745.

36. *See* AGRIC. CODE §§ 143.021–.028, 143.033–.077, 143.082–.104, 143.106–.123.

37. AGRIC. CODE §§ 143.101–.104, 143.106–.108.

38. AGRIC. CODE §§ 143.021–.028, 143.033–.034, 143.071–.077, 143.082.

IV. THRESHOLD CONSIDERATIONS: WHEN AND WHERE DO THE STATUTORY PROVISIONS APPLY?

Before exploring the precise behavior that the Texas Agriculture Code endorses or prohibits, a threshold matter is determining whether the provisions apply to the location of the accident and type of animal involved, regardless of the behavior of the livestock owner. In Part IV, this Article will define the breadth of the various provisions in terms of their location, type of animal, and whether any conditions precedent are required.[39]

A. The Highway Provision

The highway provision titled "Animals Running at Large on Highways," located in Texas Agriculture Code, Chapter 143, Subchapter E, is relatively straightforward in terms of its breadth.[40] It states, in relevant part, "[a] person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway."[41] Three observations are noteworthy.[42] First, the highway provision does not have an opt-in or opt-out mechanism; it is applicable regardless of the existence of a local stock law.[43] Second, the highway provision applies statewide to all U.S. and state highways.[44] Importantly, the Texas Agriculture Code provides a narrower definition of highway than the Texas Transportation Code by expressly excluding numbered farm-to-market roads.[45] Third, the highway provision regulates only the following animals: horses, mules, donkeys, cows, bulls, steers, hogs, sheep, and goats.[46] Therefore, unless the accident (1) occurred on a U.S. or state highway that is not a numbered farm-to-market road and (2) involved a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat, then the highway provision does not apply, regardless of the livestock owner's level of care.[47] But, a stock law provision may still be applicable.[48]

B. The Stock Law Provisions

In contrast to the highway provision, the stock law provisions—Texas Agriculture Code, Chapter 143, Subchapters B and D—are more specific and

39. *See infra* Part IV.
40. AGRIC. CODE §§ 143.101–.108.
41. AGRIC. CODE § 143.102.
42. AGRIC. CODE §§ 143.101–.102.
43. AGRIC. CODE § 143.102.
44. AGRIC. CODE § 143.101.
45. *Id.*
46. AGRIC. CODE § 143.102.
47. AGRIC. CODE §§ 143.101–.102.
48. TEX. AGRIC. CODE ANN. §§ 143.021 (West 2004 & Supp. 2014), 143.071 (West 2004).

localized. First, a stock law provision only applies in a county that has passed a local stock law triggering that particular provision's application.[49] Section 143.074(a), for example, states "a person may not permit any animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held."[50] Multiple stock law provisions are needed because they deal with distinct classes of animals. Subchapter B pertains to horses, mules, jacks, jennets, donkeys, hogs, sheep, and goats.[51] Subchapter D deals with cattle and domestic turkeys.[52]

In order to trigger the applicability of the stock law provisions, a county or smaller geographic region within a county must take certain affirmative measures.[53] First, the freeholders (i.e., landowners) of a county must petition their commissioner's court to hold an election on the issue of passing a county stock law.[54] Under Subchapter B, at least fifty freeholders must petition the county for an election.[55] To hold an election under Subchapter D, at least thirty-five freeholders must petition (fifteen if the area in view is smaller than the county as a whole) if the election pertains to cattle, and twenty-five if it pertains to domestic turkeys.[56] If enough freeholders petition, the residents of a county will vote on the proposition, and, if successful, the commissioner's court will record the result in their minutes.[57] Then, beginning thirty days after a successful election, the relevant stock law provision comes into effect in that county or smaller geographical area.[58]

Therefore, unless the accident (1) occurred in a county or smaller geographical area that has passed a stock law and (2) the stock law regulates the specific type of animal involved in the accident, the stock law provisions do not apply, regardless of the livestock owner's level of care.[59]

---

49. *See id.*

50. TEX. AGRIC. CODE ANN. § 143.074(a) (West 2004).

51. *See* AGRIC. CODE § 143.021. The authors are aware that jacks and jennets are male and female donkeys, respectively, and are unaware of any reason for the tautology of listing jacks and jennets specifically, along with donkeys generally.

52. *See* TEX. AGRIC. CODE ANN. § 143.082 (West 2004). Subchapter C deals with a local option for having a limited time for permitting hogs to roam free within counties that have adopted Subchapter B. TEX. AGRIC. CODE ANN. § 143.051(a) (West 2004); *see* TEX. AGRIC. CODE ANN. §§ 143.051–.070 (West 2004) (permitting counties that have adopted Subchapter B to permit hogs to roam at large "for a period beginning on November 15 of each year and ending on February 15 of the following year").

53. *See* AGRIC. CODE §§ 143.021, 143.071.

54. *See* AGRIC. CODE § 143.021(a).

55. *See id.* § 143.021(b)–(c). If the county has fewer than fifty freeholders, a petition is successful if a simple majority of freeholders seek the election. *Id.*

56. *See* AGRIC. CODE § 143.071(c). Interestingly, while any county may adopt a local stock law regarding cattle (though some are required to do so piecemeal), only the freeholders of Bastrop, Blanco, Clay, Collin, DeWitt, Gillespie, Gonzales, Guadalupe, Parker, or Wise County may conduct an election to adopt a stock law as to domestic turkeys. *Id.* § 143.071(b).

57. *See* TEX. AGRIC. CODE ANN. § 143.073 (West 2004).

58. *Id.* § 143.073(c).

59. *See* AGRIC. CODE §§ 143.021, 143.071; TEX. AGRIC. CODE ANN. 143.074 (West 2004).

V. THE APPLICABLE STANDARD(S) OF CARE UNDER THE TEXAS AGRICULTURE CODE

If the circumstances of the accident pass the threshold considerations of Part IV, then it becomes necessary to determine the applicable standard of care for a person who owns or controls livestock. Because there is no common-law duty to fence livestock in Texas, the standard of care is not governed by ordinary negligence, but rather the standard supplied by the Texas Legislature.[60] Accordingly, to ascertain the level of care a livestock owner owes to a motorist, we must seek the applicable standard in the Texas Agriculture Code. In Part V, this Article explores the Code for the proper standard(s) while engaging interpretations by Texas courts.[61]

A. The Highway Provision

The highway provision—Subchapter E—contains two references to its applicable standard of care. First, § 143.102 states that a person who owns or controls a "horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit" their animal to roam at large on a highway.[62] Second, § 143.108, which is the highway provision's penalty section, states that each day an animal is "permitted to roam at large in violation of Section 143.102," the responsible party has committed a Class C misdemeanor.[63] These two sections, if each were read in a vacuum, could appear to state conflicting standards of care: knowingly permit (§ 143.102) versus permit (§ 143.108).[64] Section 143.108's phrase, "in violation of Section 143.102," however, which refers the reader of § 143.108 back to § 143.102 and unifies the standard of care at knowingly permit, dissipates any ambiguity.[65] As we shall see, the stock law provisions do not benefit from such phraseology, which creates more difficult interpretive problems.[66]

B. The Stock Law Provisions

When a motorist sues a livestock owner claiming negligence per se under the stock law, a court is immediately presented with a problem of statutory construction; it must decide (1) whether the stock law can be the basis of a negligence per se claim and, if so, (2) whether the standard at issue is permit or

60. Gibbs v. Jackson, 990 S.W.2d 745, 750 (Tex. 1999).
61. *See infra* Part V.
62. TEX. AGRIC. CODE ANN. § 143.102 (West 2004).
63. TEX. AGRIC. CODE ANN. § 143.108 (West 2004).
64. *See* AGRIC. CODE §§ 143.102, 143.108.
65. AGRIC. CODE § 143.108(c).
66. *See infra* Part V.B.

knowingly permit.[67] Moreover, if the accident occurs on a highway within a county with a stock law, a court must further consider whether, even if a stock law can be the basis for a negligence per se claim, the highway provision standard of care trumps that of the stock law to the extent they may differ.[68]

Like the Subchapter E highway provision, Subchapters B and D each have two specific sections that reference a standard of care. But the stock law provisions differ from the highway provision in their structure: whereas the highway provision contains a clear standard of care section (§ 143.102) followed by a penalty section that relates back to the standard (§ 143.108), the stock law provisions first reference a standard of care in a section titled "Effect of Election" and later utilize a penalty section that stands alone.[69] This would not be of ultimate concern but for the fact that the stock law effect of election sections ostensibly conflict with their penalty sections.[70] The relevant sections of Subchapter D illustrate this problem:

> Effect of Election; Adoption of Subchapter
> (a) If a majority of the votes cast in an election are for the proposition, this subchapter is adopted and, after the 30th day following the date on which the proclamation of results is issued, a person *may not permit* any animal of the class mentioned in the proclamation to run at large in the county or area in which the election was held.[71]
>
> Penalty
> (a) A person commits an offense if the person *knowingly permits* a head of cattle or a domestic turkey to run at large in a county or area that has adopted this subchapter.
> (b) An offense under this section is a Class C misdemeanor.[72]

The confusion is further compounded by the fact that the minutes of the commissioner's court, which describe the result of the election, invariably use language that does not comport with the Texas Agriculture Code provisions.[73]

This ambiguity—whether the standard of care under the stock law provisions is permit or knowingly permit—is one of the central driving problems in this area of the law, with no consensus among Texas courts.[74] The

---

67. *See* Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874, 880 (Tex. App.—Beaumont 2010, no pet.); Goode v. Bauer, 109 S.W.3d 788, 791–92 (Tex. App.—Corpus Christi 2003, pet. denied).

68. *Goode*, 109 S.W.3d at 792; *see also* AGRIC. CODE §§ 143.102, 143.108 (outlining the standards contained in varying sections of the Agriculture Code).

69. TEX. AGRIC. CODE ANN. §§ 143.024, 143.034, 143.054, 143.074, 143.082 (West 2004).

70. *See id.*

71. AGRIC. CODE § 143.074 (emphasis added).

72. AGRIC. CODE § 143.082 (emphasis added).

73. *E.g.*, Order Declaring Results of Stock Law Election Held August 14, 1926, Kaufman County, Texas (declaring that cows are prohibited from running at large).

74. *Compare* Gibbs v. Jackson, 990 S.W.2d 745, 750 (Tex. 1999) (making no holding on whether a stock law creates tort liability, but noting that the county at issue did not have a stock law and observing that some appellate courts have read the stock law as creating a basis under which to sue for negligence), *with*

reason for this concern is that the modifier—knowingly—may reflect a heightened standard of care and, even if it does not, may sit differently in the mind of a juror. But there is another possibility, adopted by one court and considered here first, which is that the stock law provisions are not even applicable to personal injury lawsuits because the provisions do not meet the prerequisites for a negligence per se cause of action.[75]

1. Questions Regarding the Applicability of Stock Law Provisions to a Personal Injury Plaintiff

Most Texas appellate courts have skipped over the question of whether an accident arising from a livestock owner's violation of the stock law provisions gives rise to a negligence per se claim.[76] This is an important threshold question because the mere existence of a statutory duty does not necessarily lead to a negligence per se claim, even if the statutory duty is embedded in a criminal statute.[77] Before negligence per se is available as a cause of action, the claim must satisfy two inquiries: (1) Does the plaintiff belong to the class that the statute was intended to protect? (2) Is the plaintiff's injury of a type that the statute was designed to prevent?[78]

The only court to apply this analysis to the stock law provisions is the Thirteenth Court of Appeals in Corpus Christi, which held that motorists "are not in the category of persons that [the stock law] was specifically designed to protect"; therefore, the stock law provisions cannot be the basis for a negligence per se claim.[79] *Goode v. Bauer* involved a motorist in Calhoun County who was injured when his car struck a cow on a state highway.[80] The plaintiffs, who consisted of the driver and passengers in the car, pleaded that the defendant cattle owner was liable for negligence per se for violating §§ 143.074 and

---

Rodriguez v. Sandhill Cattle Co., L.P., 427 S.W.3d 507, 510 (Tex. App.—Amarillo 2014, no pet.), Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874, 880–81 (Tex. App.—Beaumont 2010, no pet.), *and* Goode v. Bauer, 109 S.W.3d 788, 792 (Tex. App.—Corpus Christi 2003, pet. denied) (holding that stock law does not form the basis for a negligence per se claim). Additionally, the Tyler Court of Appeals exhibited a wide range of opinion on this matter in the 1970s, holding at one point that the stock law formed the basis of a negligence per se claim with knowingly permit being the standard of care, and then a few years later holding that knowingly was not a required element. *See* Warren v. Davis, 539 S.W.2d 907, 910 (Tex. Civ. App.—Corpus Christi 1976, no writ); Weddle v. Hudgins, 470 S.W.2d 218, 219 (Tex. Civ. App.—Tyler 1971, writ ref'd n.r.e.). But note that § 143.034 applies to those who own or control livestock and § 143.082 applies to persons generally. *See* AGRIC. CODE §§ 143.034, 143.082.

75. *See Goode*, 109 S.W.3d at 792.

76. *See Rose*, 305 S.W.3d at 877 (showing that the court did not consider a negligence per se claim).

77. Perry v. S.N., 973 S.W.2d 301, 304 (Tex. 1998) ("All persons have a duty to obey the criminal law in the sense that they may be prosecuted for not doing so, but this is not equivalent to a duty in tort."); Carter v. William Sommerville & Son, Inc., 584 S.W.2d 274, 278 (Tex. 1979) ("It is well-established that the mere fact that the Legislature adopts a criminal statute does not mean this court must accept it as a standard for civil liability.").

78. *Perry*, 973 S.W.2d at 305; *Goode*, 109 S.W.3d at 791.

79. *Goode*, 109 S.W.3d at 792.

80. *Id.*

143.082 of the Texas Agriculture Code.[81] The court concluded that the stock law provisions were "designed to protect all persons and property from wandering animals, not just motorists," holding that "a violation of section 143.074 of the agriculture code will not constitute negligence per se."[82] As a result, the plaintiffs would have to seek redress under the highway provision in which motorists are clearly the class of persons the statute was designed to protect.[83]

2. The Approaches of Courts That Apply the Stock Law Provisions

Although *Goode* rejected the idea that a stock law could give rise to a negligence per se claim, two other courts have struck a different path.[84] The Ninth Court of Appeals in *Rose v. Ben C. Hebert Heirs* and the Seventh Court of Appeals in *Rodriguez v. Sandhill Cattle Co., L.P.* determined that the stock law provisions can give rise to a negligence per se claim and explored what a plaintiff must prove in order to prevail.[85] Both courts were faced with a typical dispute between the attorneys: defense counsel sought the knowingly permit standard while plaintiff's counsel preferred the lower permit standard.[86] The courts allowed the permit standard but spent a good portion of their opinions tackling the issue of what the word permit means.[87] As we shall see, these courts found their own means of incorporating a knowingly-type intent requirement by defining permit narrowly.[88]

In *Rose*, the court conducted a thorough analysis of Subchapter D, §§ 143.074 and 143.082 to determine the applicable standard of care to which a defendant in a civil case should be held.[89] The court's analysis utilized two canons of construction: (1) absent patent ambiguity, the plain meaning of a statute should prevail; and (2) context assists in narrowing the range of a statute's plain meaning.[90] The court decided to follow such an approach in light of the Code Construction Act in 1985, which provides that "[t]erms not specifically defined by statute are construed according to the rules of grammar and common usage."[91]

The court referenced *Webster's* dictionary for the plain meaning of permit, finding that its lexical range spans from "to make possible" to "to consent to

81. *Id.* at 791.
82. *Id.* at 792.
83. *Id.*
84. *See id.*; Rodriguez v. Sandhill Cattle Co., L.P., 427 S.W.3d 507, 508–10 (Tex. App.—Amarillo 2014, no pet.); Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874, 879–81 (Tex. App.—Beaumont 2010, no pet.).
85. *Rodriguez*, 427 S.W.3d at 508–10; *Rose*, 305 S.W.3d at 879–81.
86. *Rodriguez*, 427 S.W.3d at 509–10; *Rose*, 305 S.W.3d at 880.
87. *Rose*, 305 S.W.3d at 880.
88. *Id.*; *Rodriguez*, 427 S.W.3d at 510.
89. *Rose*, 305 S.W.3d at 880.
90. *Id.*
91. *Id.* (citing TEX. GOV'T CODE ANN. § 311.011(a) (West 2013)).

expressly or formally."[92] Therefore, § 143.074, if read in isolation, could impose a standard ranging from near-strict liability (to make possible) to subjective approval or intent (to consent to expressly or formally).[93]

The court resolved this variation by looking to the statute's context, particularly the language of § 143.082, which is Subchapter D's penalty provision:

> In light of the Legislature's choice to restrict the reach of the statute's penalty provision to those who "knowingly" permit cattle to roam at large, we are skeptical that the Legislature intended the duty it created in section 143.074 to extend to any person "who makes possible" the escape of cattle from a pasture.[94]

The court then concluded that in context—in light of the language of § 143.082—permit must mean "to consent to expressly or formally" or "to give leave."[95] Therefore, for a livestock owner to breach his standard of care under a stock law provision, there must be evidence that the owner consented, expressly or formally, or gave leave for his livestock to exit his property and roam at large.[96]

In March 2014, the Seventh Court of Appeals in Amarillo decided *Rodriguez*, a case involving a motorist's collision with a bull on a non-highway in a county that had enacted a stock law.[97] The trial court granted summary judgment in favor of the defendant livestock owner.[98] The trial court, persuaded by the reasoning in *Rose*, asked the plaintiff's lawyer at the hearing on the defendant's motion for summary judgment, "[w]hat evidence do you point to specifically that the defendant permitted the cattle to roam at large based on the definition that we have in the law which means to consent to expressly or formally, or to give leave?"[99] The appellate court, equally convinced by the reasoning of *Rose*, adopted that court's definition of permit.[100] Importantly, neither the Seventh Court of Appeals in *Rodriguez* nor the Ninth Court of Appeals in *Rose* examined the threshold questions that must be satisfied before imposing negligence per se, and it is unclear from the opinions that counsel for the respective livestock owners in those cases argued that the stock law could not form the basis of a negligence per se claim.[101]

---

92. *Id.* (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY 1683 (2002)) (internal quotation marks omitted).

93. *Id.* at 880–81.

94. *Id.*

95. *Id.* at 881 (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY, *supra* note 92, at 1683) (internal quotation marks omitted).

96. *Id.*

97. Rodriguez v. Sandhill Cattle Co., L.P., 427 S.W.3d 507, 508 (Tex. App.—Amarillo 2014, no pet.).

98. *Id.*

99. *Id.* at 510 n.2 (internal quotation marks omitted).

100. *Id.* at 509–10.

101. *See id.* at 510–11; *Rose*, 305 S.W.3d at 881.

3. When the Stock Law Provisions and Highway Provision Overlap

This Article has, to this point, examined the applicable standard of care on a highway in a county with no stock law and the varying approaches to a pure stock law analysis. But what happens when the accident occurs on a highway in a county with a stock law? To state the issue differently, if the standard under the highway provision is clear (knowingly permit), but the standard under the stock law provisions is unclear (permit or knowingly permit), which provision takes precedence when both potentially apply?[102]

A few intermediate appellate courts have addressed the potential conflict, with all but one ruling without directly addressing the conflict. For example, *Rose* declined to decide which provision(s) applied because no evidence existed of even the lower permit standard:

> The Landowners also argue that section 143.102 of the Agriculture Code is the controlling provision for highways. Therefore, they conclude that the Legislature never intended the local option stock provision, found in section 143.074, and which is not restricted to any specific roadway, to also apply to a collision that occurred on a highway. It is unnecessary that we reach this alternative argument in resolving the appeal.[103]

Further, *Goode* had no need to resolve a potential conflict, ultimately holding that there could be no conflict because the stock law provisions were not actionable by motorists.[104] Only the Seventh Court of Appeals, in an unpublished opinion styled *Harlow v. Hayes*, has acknowledged the resolution of the conflict.[105]

In *Harlow*, a motorist struck a horse roaming at large on a U.S. highway.[106] The plaintiff sought to apply the Subchapter B stock law provisions and, alternatively, the Subchapter E highway provision.[107] Faced with a conflict between two potentially competing standards, the court located a solution elsewhere within the highway provision, § 143.107, titled "Conflict With Other Law."[108] Section 143.107 provides, "[t]his subchapter prevails to the extent of any conflict with another provision of this chapter."[109] Here, "this subchapter" refers to Subchapter E, and "this chapter" refers to Texas Agriculture Code Chapter 143.[110] Therefore, the legislature intended that if there is a standard of care within Subchapter E that conflicts with a standard of

---

102. *See* TEX. AGRIC. CODE ANN. §§ 143.074, 143.082, 143.102 (West 2004).
103. *Rose*, 305 S.W.3d at 879 n.10 (citations omitted).
104. Goode v. Bauer, 109 S.W.3d 788, 792 (Tex. App.—Corpus Christi 2003, pet. denied).
105. Harlow v. Hayes, No. 07-95-0210-CV, 1996 WL 467464, at *2–3 (Tex. App.—Amarillo Aug. 16, 1996, no writ) (per curiam).
106. *Id.* at *1.
107. *Id.* at *2.
108. TEX. AGRIC. CODE ANN. § 143.107 (West 2004); *Harlow*, 1996 WL 467464, at *2–3.
109. AGRIC. CODE § 143.107.
110. *See id.*

care in another Subchapter, then Subchapter E controls.[111] In cases involving livestock on highways in counties with stock laws, the standard of care of the livestock owner must, therefore, be found in Subchapter E: knowingly permit.[112] While this solution is only provided by one unpublished opinion, the language of the statute is clear.[113]

4. Concluding Thoughts on the Standard of Care

Based on the opinions discussed in Part V above, three recurring issues are likely to arise at some point in any case involving a motorist colliding with livestock. First, there is a split in Texas law over whether the stock law provisions are actionable by a motorist under a negligence per se theory of liability.[114] Second, among the courts that allow a cause of action under the stock law provisions, there is much discussion over the meaning of permit in light of the knowingly permit language of the stock law provisions' penalty sections.[115] On this issue, courts have adopted a narrow definition of permit on the belief that the Texas Legislature intended an element of intent as a prerequisite to liability.[116] Third, courts have remained relatively silent on the conflict of law that arises when an accident occurs on a highway in a county that has adopted a stock law. No courts have expressly held that both the highway provision and the stock law provisions apply, but only one court has held otherwise.[117] Accordingly, this issue is sorely under-discussed but fairly easily resolvable through the plain language of § 143.107. Finally, what we do know for an absolute fact is that the standard of care is not "allow"; that is, no court has held that the stock law or any code provision creates a strict liability standard of care on the part of ranchers.[118] This observation is crucial because language that is too imprecise risks turning cow-in-the-road cases into strict liability torts, which they most certainly are not.[119] Part VII below discusses ways in which the Texas Legislature and Texas courts could improve upon these issues.[120]

---

111. *Id.*

112. *Id.*

113. *Id.*

114. *Compare* Goode v. Bauer, 109 S.W.3d 788, 792 (Tex. App.—Corpus Christi 2003, pet. denied) (holding that there exists liability for failing to restrain animals when there is a statutory duty to do so), *with* Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874, 880–81 (Tex. App.—Beaumont 2010, no pet.) (holding that the legislature did not intend to extend a duty to any person who could have made the livestock's escape possible).

115. *Rose*, 305 S.W.3d at 880–81.

116. *Id.*

117. Harlow v. Hayes, No. 07-95-0210-CV, 1996 WL 467464, at *2–3 (Tex. App.—Amarillo Aug. 16, 1996, no writ) (per curiam).

118. *Rose*, 305 S.W.3d at 877.

119. *Id.*

120. *See infra* Part VII.

VI. THE JURY CHARGE

For the practitioner, one of the most crucial aspects of a case is the wording of the jury charge because the specific questions of the charge could tip the scales of liability in a case. Most personal injury cases involve common-law negligence, and practitioners are well aware of the typical broad-form negligence question and accompanying definitions of negligence, ordinary care, and proximate cause. In Part VI, this Article discusses issues surrounding the proper wording of the jury charge in a case involving livestock roaming at large.

When a statute, ordinance, or regulation defines a standard of care other than that of ordinary negligence, the *Texas Pattern Jury Charges* suggest redefining negligence with the language of the statute, ordinance, or regulation.[121] The example the *Texas Pattern Jury Charges* provides is in the context of a person who caused an accident while driving the wrong way on a one-way street: "'[n]egligence' means *driving on a street in a direction other than the direction designated and signposted as one-way*."[122] The liability question would still read the same, and the different standard of care would be accounted for by a replaced definition of negligence, with the definition for ordinary care omitted.[123] A slightly different approach would be to include a jury instruction—rather than a definition—that some particular behavior is forbidden by law and is negligence in itself: "[t]he law *forbids driving the wrong way on a street designated and signposted as one-way*. A failure to comply with this law is negligence in itself."[124] Given these two valid approaches to the jury charge, how should courts word the charge in a livestock-roaming-at-large case? The most significant contribution to the jury charge question was made by the Thirteenth Court of Appeals in *Goode*.[125] The facts of *Goode* are typical of these types of cases: A driver collided with a cow on a state highway in a county that had passed a stock law and the driver sued the owner of the cow.[126] What is not typical of *Goode*, however, is the amount of detail with which the court discussed the wording of the jury charge.[127]

In *Goode*, before the jury rendered a decision, the attorneys argued over the wording of the charge.[128] The plaintiff's attorney proposed this instruction and question:

---

121. COMM. ON PATTERN JURY CHARGES, STATE BAR OF TEX., TEXAS PATTERN JURY CHARGES: GENERAL NEGLIGENCE & INTENTIONAL PERSONAL TORTS 5.3 (2012).

122. *Id.*

123. *Id.* cmt.

124. *Id.* at 5.1.

125. *See* Goode v. Bauer, 109 S.W.3d 788, 790–91 (Tex. App.—Corpus Christi 2003, pet. denied).

126. *Id.* at 790.

127. *Id.* at 790–91.

128. *Id.*

> With respect to [the livestock owner,] you are instructed that the law provides that a person may not permit a head of cattle to run at large in Calhoun County, Texas. A failure to comply with this law is negligence in itself.
> Did the negligence, if any, of [the livestock owner] proximately cause the occurrence in question?[129]

The defense attorney proposed a different instruction and question, along with a definition:

> You are instructed that the law provides that a person may not knowingly permit a head of cattle to run at large in Calhoun County, Texas. A failure to comply with this law is negligence.
> Question No. 1: Do you find that [the livestock owner] was negligent by knowingly permitting a head of cattle to run at large which was involved in the incident on the occasion in question?
> A person acts knowingly, or with knowledge, with respect to the nature of his conduct or the circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to the result of his conduct when he is aware that his conduct is reasonably certain to cause the result.[130]

The trial judge decided to use the defense attorney's proposed charge language and rejected the plaintiff's proposed charge.[131] After the jury returned a verdict of no liability, the plaintiff appealed the trial judge's jury charge ruling.[132] The appellate court affirmed the trial judge's ruling on the basis that knowingly permit is the operative standard of care because that is the language the legislature chose for cattle on highways.[133] This ruling was consistent with the Thirteenth Court's view that the stock law provisions cannot form the basis for a cause of action by a motorist.[134] In doing so, the court rejected the argument that a negligence per se claim exists for stock law claims.[135] Therefore, based on the guidance of the Thirteenth Court of Appeals, the jury charge should include the prohibited conduct, along with the applicable standard of care, within the liability question.[136] Then, the charge should include a definition of knowingly.[137]

Outside the jurisdiction of the Thirteenth Court of Appeals, courts may seek a slightly different approach—especially if the courts allow suit under the stock law provisions—although their cases have not opined directly on the

129. *Id.* at 790.
130. *Id.* at 790–91.
131. *Id.*
132. *Id.*
133. *Id.* at 791–93; *see supra* Part V.B.1 (providing additional discussion regarding the rationale behind the court's opinion in *Goode*).
134. *Id.* at 792–93.
135. *Id.* at 791–93.
136. *Id.* at 790–91.
137. *Id.*

language of the jury charge. For example, the Ninth Court of Appeals would almost certainly adopt the same question as the Thirteenth Court of Appeals with permit substituted for knowingly permit.[138] Then, instead of a definition of knowingly, the court would require the definition of permit adopted by that jurisdiction: "to consent to expressly or formally" or "to give leave."[139] Accordingly, the jury charge in the Ninth Court of Appeals, along with other jurisdictions that have adopted the same approach (e.g., the Seventh Court of Appeals), would read:

> Question No. 1: Do you find that [the livestock owner] was negligent by permitting a head of cattle to run at large which was involved in the incident on the occasion in question?
> "Permit" means "to consent to expressly or formally" or . . . "to give leave."[140]

The Thirteenth Court of Appeals' charge and the Ninth Court of Appeals' likely charge seek the same goal of guarding against strict liability by indicating to the jury that the livestock owner must have acted affirmatively, either in mind or deed.[141] Although the Ninth Court of Appeals has not expressly adopted a knowingly modifier for permit, it has narrowly defined permit with something close to intent in mind.[142]

The difference between knowingly permit and permit, however, is significant. Consider the situation where a livestock owner intentionally opens his gate but negligently leaves it open, allowing a cow to roam at large on a roadway. There, a juror could conclude that the owner permitted his cow to roam at large because the act of opening a gate may be interpreted as formal consent even if the consent was not express. By contrast, it seems unlikely that a juror would conclude that the owner *knowingly* consented to his cow roaming at large if the evidence showed that the owner's failure to close the gate was mere negligence. This different result is a consequence of the fact that the *knowingly* modifier heightens the standard of care to which a livestock holder is held.[143]

The impact of permit versus knowingly permit is also one of jury psychology, which is not always readily discernable but is incredibly important nonetheless.[144] The legal definition of permit—to consent to expressly or formally, or to give leave—is not intuitive and is likely narrower than what a

138. Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874, 880–81 (Tex. App.—Beaumont 2010, no pet.).
139. *Id.* at 881 (internal quotation marks omitted).
140. *Id.*; *Goode*, 109 S.W.3d at 790–91.
141. *See generally Rose*, 305 S.W.3d 874 (discussing the Ninth Court of Appeal's likely charge); *Goode*, 109 S.W.3d 788 (discussing the Thirteenth Court of Appeal's likely charge).
142. *See Rose*, 305 S.W.3d at 880–81.
143. *See id.* at 880.
144. *See id.*

juror would normally think, while the knowingly definition reinforces a common, intuitive meaning.[145]

VII. RECOMMENDATIONS

In order to resolve ambiguities and clarify confusion in this area of law, several legal bodies could make an important difference. Part VII provides recommendations to the Texas Legislature, the Texas Supreme Court, and the State Bar of Texas.[146]

A. The Texas Legislature

The language of the Texas Agriculture Code is partially to blame for the difficulties in livestock-fencing law.[147] The Texas Legislature should amend Chapter 143 to resolve the confusion in the following ways: First, the legislature should maintain consistent standard-of-care language throughout each subchapter.[148] It makes no sense to say that a livestock owner may not permit his cattle to run at large, only to later—in the same subchapter—add the word knowingly in the penalty section.[149] This forces the interpreter to rely too much on context, which has led to varying conclusions. Second, the legislature should provide a definition of the term permit. The intermediate appellate courts have struggled to divine the legislature's intended meaning behind permit.[150] *Rose* provides a very useful definition that was later adopted by the Seventh Court of Appeals in *Rodriguez*, but those two opinions are not binding statewide.[151] There is nothing at this time preventing a different court from adopting a broad definition of permit that is more akin to strict liability than an act of intent. The definition from *Rose* is workable and the legislature should codify it.[152] Third, the legislature should clarify whether the stock law provisions are trespass statutes, personal injury statutes, or both. As discussed in Part V, the language of the stock law provisions does not appear to be directed toward protecting motorists; instead, they read like trespass statutes.[153] Courts, however, have struggled over this question.[154] The legislature has two options, depending on its intent. First, if it wishes the stock law provisions to create personal injury liability in the context of a vehicle collision, then the

145. *See id.*
146. *See infra* Part VII.A–C.
147. *See generally* TEX. AGRIC. CODE ANN. § 143 (West 2004 & Supp. 2014) (discussing fences and range restrictions).
148. *See* TEX. AGRIC. CODE ANN. §§ 143.074, 143.082 (West 2004).
149. *See id.*
150. *Rose*, 305 S.W.3d at 880–81.
151. *Id.*; Rodriguez v. Sandhill Cattle Co., L.P., 427 S.W.3d 507, 509–10 (Tex. App.—Amarillo 2014, no pet.).
152. *See Rose*, 305 S.W.3d at 880–81.
153. *See supra* Part V.
154. *See* Goode v. Bauer, 109 S.W.3d 788, 791–93 (Tex. App.—Corpus Christi 2003, pet. denied).

legislature should simply broaden the Agriculture Code's definition of highway to include all public roads.[155] Such an approach would cause the highway provision to subsume the stock law provisions for motorist-liability purposes and, at the same time, bring the Agriculture Code's definition into line with that of the Texas Transportation Code.[156] Second, if the legislature wishes the stock law provisions to exclude personal injury liability, then it should include language clarifying that the nature of a stock law is to prevent animal trespass and property damage, thus leaving personal injury liability to the highway provision alone.[157] This clarification would make it impossible for injured motorists to recover for a collision with livestock on a farm-to-market road, but if that is the will of the legislature, then the legislature needs to be clear on the topic.

B. The Texas Supreme Court

A constant source of frustration for practitioners in this area of the law is that the duties and obligations of an owner of livestock are not intuitive, even to judges. Common sense would dictate—to the layperson—that if a cow is on the road unattended, then the owner is at fault, regardless of intent. The instinct of more legal-minded people is to immediately begin thinking about whether the livestock owner kept his fences in good repair or whether his cows were well fed (and thus less likely to seek grass beyond the fencing). But these are issues of ordinary negligence and not necessarily related to knowingly permit—to consent to expressly or formally, or to give leave. Further compounding the difficulty is the fact that there is no individual opinion that addresses the major problems in a clear, concise manner. Instead, we have one Texas Supreme Court opinion disavowing a claim for common-law negligence, coupled with myriad intermediate opinions that are at times inconsistent and at times unclear.[158] As a result, trial judges may be just as unclear on livestock liability as anyone else that has not taken the time to cobble together the various opinions into a cohesive picture of the issues at play.

This can all be solved if the Texas Supreme Court grants review in one case and makes Texas law uniform by providing a definitive interpretation of Texas Agriculture Code, Chapter 143, specifically addressing: (1) the standard of care that a rancher owes a motorist; (2) the definition of permit; (3) whether the stock law provisions are actionable through a negligence per se cause of action; (4) if the stock law provisions are actionable, whether the standard is permit or knowingly permit; and (5) the relationship between the highway provision and the stock law provisions.[159] This could be accomplished in an

155. TEX. AGRIC. CODE ANN. § 143.107 (West 2004).
156. *See id.*
157. *See* TEX. AGRIC. CODE ANN. §§ 143.074, 143.082 (West 2004).
158. *See supra* Part V.
159. *See* AGRIC. CODE §§ 143.074, 143.082, 143.107.

opinion of fifteen pages or less and would dramatically improve this corner of the law.

C. The State Bar of Texas

Practitioners and trial courts rely heavily on pattern jury charges prepared by the Committee on Pattern Jury Charges of the State Bar of Texas. The book, titled *Texas Pattern Jury Charges*, provides sample jury charges not only for cases of ordinary, common-law negligence, but also for specialized cases that require additional instruction.[160] Examples include pattern charges for statutory dramshop liability, false imprisonment, and malicious prosecution.[161] But there is no charge specific to livestock liability. This is a glaring omission given the clear difficulties courts suffer when attempting to determine the correct charge.[162] The solution would be simple: after careful consideration of both *Rose* and *Goode*, craft pattern charges for cases involving livestock roaming at large. The Committee should lift the charging language for an alleged violation of the highway provision directly from *Goode*. Then, if the Committee concludes that the stock law provisions are, or may be, actionable, it should craft a variation of the negligence per se charge with an accompanying definition of permit, taken from *Rose*. The result would be as follows: "Question No. 1: Do you find that [the livestock owner] was negligent by knowingly permitting a head of cattle to run at large which was involved in the incident on the occasion in question?"[163] Permit means "to consent to expressly or formally" or "to give leave."[164]

These two alternatives, if included in the *Texas Pattern Jury Charges*, would provide invaluable assistance to trial judges and personal injury practitioners.

VIII. CONCLUSIONS

Absent changes to the Agriculture Code by the Texas Legislature and a definitive opinion by the Texas Supreme Court, trial courts and appellate courts must rely on the plain meaning of the statutes, coupled with sound legal principles.[165] After thorough analysis, the authors have reached several conclusions, although, admittedly, there is room for disagreement given the current state of the law.[166]

---

160. *See* STATE BAR OF TEX., *supra* note 121, at 5.3.

161. *See id.* at 5.5, 6.1, 6.4.

162. *See generally* Goode v. Bauer, 109 S.W.3d 788 (Tex. App.—Corpus Christi 2003, pet. denied) (discussing the court's difficulty in determining the correct jury charge specific to livestock liability).

163. *Id.* at 790.

164. Rose v. Ben C. Hebert Heirs, 305 S.W.3d 874, 881 (Tex. App.—Beaumont 2010, no pet.).

165. *See supra* Part V.B.1–2.

166. *See supra* Part VII.A–B.

A. The Definition of "Permit"

The definition of permit adopted by the Ninth Court of Appeals in *Rose* and the Seventh Court of Appeals in *Rodriguez* is sound.[167] Both courts correctly recognized that an overly broad definition drifts too closely into the realm of strict liability, when context suggests that the intent of the legislature was to provide some degree of intent requirement.[168] Although important at this time, the definition may ultimately prove irrelevant if courts or the legislature determine that the stock law provisions do not support a negligence per se cause of action.[169]

B. The Standard of Care if an Accident Occurs on a Highway in a County That Has Passed a Stock Law

If a motorist collides with livestock on a U.S. or state highway, the highway provision governs to the exclusion of the stock law provisions, even if the county passes a stock law.[170] This conclusion derives from a plain reading of § 143.107, which provides that any conflict in the law defaults to Subchapter E, the highway provision.[171] Although this is an under-discussed problem, the Seventh Court of Appeals in *Harlow* was correct in its assessment.[172]

C. Whether the Stock Law Provisions Form the Basis of a Personal Injury Suit

Neither a county stock law nor the stock law provisions form the basis of a negligence per se cause of action. Motorists are simply not the class of persons the stock laws were intended to protect, and bodily injury is not the type of harm stock laws were meant to prevent.[173] The legislature gave counties the option of passing local stock laws in 1876, long before widespread automobile ownership and production.[174] The stock law provisions make no mention of roads or highways.[175] Instead, stock laws are, at their core, trespass statutes.[176]

---

167. *See* Rodriguez v. Sandhill Cattle Co., L.P., 427 S.W.3d 507, 509–10 (Tex. App.—Amarillo 2014, no pet.); *Rose*, 305 S.W.3d at 881.

168. *Rodriguez*, 427 S.W.3d at 509–10; *Rose*, 305 S.W.3d at 880–81.

169. *See generally* Part VII.A–B (explaining the need for a decision concerning stock law provisions).

170. *See* TEX. AGRIC. CODE ANN. §143.107 (West 2004).

171. *Id.*

172. *See* Harlow v. Hayes, No. 07-95-0210-CV, 1996 WL 467464, at *2–3 (Tex. App.—Amarillo Aug. 16, 1996, no writ) (per curiam).

173. *See* Goode v. Bauer, 109 S.W.3d 788, 791–93 (Tex. App.—Corpus Christi 2003, pet. denied).

174. Gibbs v. Jackson, 990 S.W.2d 745, 748 (Tex. 1999) ("The Legislature has also provided for local stock laws since 1876, and has repeatedly rewritten the scope of those laws.").

175. *See* TEX. AGRIC. CODE ANN. §§ 143.021, 143.033 (West 2004 & Supp. 2014), 143.022–.028, 143.034–.077, 143.082 (West 2004).

176. *See id.*

The impetus behind empowering counties to enact stock laws was the late-nineteenth century problem of landless livestock owners herding their cattle across the land of others.[177] This idea is illustrated in three ways within the stock law provisions. First, the enumerated prohibitions in Subchapter B, by and large, do not logically concern animals on a roadway.[178] There, a person is guilty of an offense if the person knowingly: (1) "turns out" an animal on land that does not belong to the person, (2) does not "keep up" an animal, (3) allows an animal to trespass on another's land, or (4) permits an animal to run at large.[179] Read in context, these prohibitions relate to trespass. Second, Subchapter D groups turkeys and cows together.[180] No reported case involves a motorist suing under a stock law for personal injuries sustained when the motorist's car struck a roaming turkey, and turkeys are not included in the highway provision, which is geared toward motorist protection.[181] Finally, under Subchapter C, counties that have enacted the Subchapter B ban on hogs running at large may vote to permit hogs to run at large for a three-month period: from November 15 until February 15 of the following year.[182] Obviously, cars do not stop traveling roadways during those months, so this carved-out hog exception that voters may enact is further proof that motorists are not the class of people protected by stock laws.[183]

D. Final Thoughts

The law surrounding personal injury suits that results from a motorist colliding with livestock is not flashy, but it is important. These events occur regularly in rural Texas counties and an injured motorist needs to know how to proceed, just as cattle owners need to know whether they are liable.[184] Clarity leads to predictability, which will facilitate the settlement of cases and relieve courts of some of their burdensome docket. Moreover, judges and legislators must always strive toward precision and consistency, and the authors hope that this Article will assist in that pursuit.

---

177. *Gibbs*, 990 S.W.2d at 747–48.

178. *See* AGRIC. CODE § 143.034.

179. *Id.*

180. *See* AGRIC. CODE § 143.082.

181. *See* TEX. AGRIC. CODE ANN. § 143.107 (West 2004).

182. *See* TEX. AGRIC. CODE ANN. §§ 143.051–.056 (West 2004).

183. *See id.* Hogs play a prominent role in Chapter 143. *Id.* The only statewide fencing requirement appears in the first section of Chapter 143: "Except as provided by this chapter for an area in which a local option stock law has been adopted, each gardener or farmer shall make a sufficient fence around cleared land in cultivation that is at least five feet high and will prevent hogs from passing through." TEX. AGRIC. CODE ANN. § 143.001 (West 2004). Subchapter B makes clear that people do not have to fence against animals prohibited from roaming at large under that subchapter. TEX. AGRIC. CODE ANN. § 143.032(a) (West 2004). But if a county has enacted Subchapter B, one who must fence, must have a fence that "is sufficient to keep out ordinary livestock permitted to run at large." TEX. AGRIC. CODE ANN. § 143.028(a) (West 2004). And under Subchapter D, "A fence is sufficient for purposes of this chapter if it is sufficient to keep out the classes of animals not affected by this subchapter." TEX. AGRIC. CODE ANN. § 143.077 (West 2004).

184. *See supra* Part VII.B.