
KANSAS
FARM LEASE LAW/FENCE LAW
KSU EXTENSION
RURAL LIVING SERIES
MARAIS DES CYGNES DISTRICT

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Washburn University School of Law Courses That Relate to Agricultural Law

<ul style="list-style-type: none"> • Advanced Oil & Gas Law • Agricultural Law • Agricultural Contracts • Drafting Contracts and Conveyances • Energy Regulation • Environmental Regulation of Agriculture • Environmental Regulation of the Oil and Gas Industry • Estate and Business Planning for Farmers and Ranchers • Estate Planning and Taxation • Farm Bankruptcy • Farm and Ranch Taxation • Farm Income Tax Planning and Management • Federal Indian Law • Independent Readings in Natural Resources Law • Independent Study in Oil and Gas Law • International Petroleum Arbitration • International Petroleum Transactions • Kansas Legal Research 	<ul style="list-style-type: none"> • Mineral Title Examination • Mining Law • Oil and Gas Conservation Law and Practice • Oil and Gas Joint Operations • Oil and Gas Law • Oil and Gas Taxation • Property Law Issues Related to Rural Land • Public Land Law • Real Estate Transactions • Renewable Energy Law: Wind and Solar • Rural Practice Externship • Secured Transactions • Tribal Law and Government • Water, Environmental, and Regulatory Law Impacting Agriculture • Water Rights
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Agricultural Leases – What are the Issues?

- **Various Issues**
 - Removable fixtures
 - Permanent improvements
 - Landlord's right of entry
 - Lease termination
 - Lease assignment
 - Control of weeds
 - Liability for rent in event of natural disaster
 - Right of tenant to harvest crop if land is sold or tenant dies
 - "Doctrine of emblements"
 - Right to crop that is growing when lease terminates
 - "Away-going" crop

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The Importance of Leasing to Agriculture

- **Permits farmers and ranchers to operate larger farm businesses with the same amount of capital**
 - Assists beginning farmers and ranchers in establishing a farming or ranching business



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Types of Agricultural Leases

- **Cash lease**
 - Periodic payment of a rental amount that is either a fixed number of \$/acre or fixed amount for the entire farm
- **Flexible cash lease**
 - Specifies that the amount of cash rent fluctuates with production conditions and/or crop or livestock prices

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Types of Agricultural Leases

- **Hybrid cash lease**
 - Specifies that the rental amount is to be determined by multiplying a set number of bushels by a price determined according to terms of the lease, but at a later date
 - Tenant markets the entire crop, the landlord benefits from price increases, and the tenant does not bear the entire risk from low commodity prices

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Types of Agricultural Leases

- **Guaranteed bushel lease (hybrid-cash lease)**
 - Tenant delivers a set amount of a certain type of grain to a buyer by a specified date; the landlord determines when to sell the grain
- **Minimum cash or crop share lease**
 - Guaranteed cash minimum; with landlord having the opportunity to share in crop production from a good year without incurring out-of-pocket costs; tenant retains production risks
 - Rent is paid in a certain proportion of the crops

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Types of Agricultural Leases

- **Crop share lease**
 - Rent paid on basis of proportion of crops
 - Expenses shared by agreement
- **Livestock share lease**
 - Share of livestock, livestock products and crops paid as rent
 - Landlord usually shares expenses
- **Irrigation crop-share leases**
 - Rent certain proportion of crops produced
 - Landlord shares expenses

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Other Points Concerning Leases

- **Estate planning implications**
 - Material participation and social security benefits
 - Material participation and post-mortem estate planning techniques
 - Post-death cash leasing
- **Farm program benefits**
 - “Active engagement” test

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FSA Regulations

- **When is a cash lease a cash lease?**
 - Notice DCP-172 (Apr. 2, 2007)
 - If any portion of rental payment is based on gross revenue, the lease is a share lease
 - If rent is tied to set amount of production based on future market value that is not associated with the farm's specific production, it's a cash lease

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FSA Regulations

- **Beginning with 2009 crop year, tenants and their landlords may reach any agreement desired concerning flexing the cash rent payment and lease will still be deemed to be a share-rent arrangement**

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Other Farming Arrangements

- **Custom cutters**
 - Usually treated as independent contractors
- **Croppers**
 - Not treated as tenants if landlord supplies land *and* inputs, controls operation of the farm and pays portion of crop to the person raising and harvesting the crop
 - No legally enforceable interest in crop
 - Only has contract right to compensation in-kind for labor
 - No interest in real property to be terminated
 - A “cropper” is an employee (i.e., a wage earner) that is hired to produce a crop.
 - *Henney v. Lambert*, 237 Iowa 146, 21 N.W.2d 301 (1946)

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Custom Cutters and Croppers

- Questions concerning status of parties
 - Courts look to intent of parties based on facts and circumstances
 - Terms of agreement (written or oral)
 - Actions of parties
 - Type of farming operation
 - Has exclusive possession been given?
 - See *Hoffman v. Estate of Siler*

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Agricultural Leases as Estates in Land

- A lease is an estate in land for a definite period of time that is fixed in advance
- Oral agriculture leases are presumed to be tenancies from year to year that automatically renew if no notice of termination is given
 - State law governs termination of oral agricultural leases

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Leases and Allocation of Risk

- *K & M Enterprises v. Pennington*, 764 So. 2d 1089 (La. Ct. App. 2000)
 - **Facts:** The plaintiff leased ground from the defendant and planted 406 acres to corn. The growing crop was consumed by deer, and the tenant sued to recover the lost crop.
 - **Issue:** Whether the tenant bears the risk of loss of the corn crop

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Leases and Allocation of Risk

- ***K & M Enterprises v. Pennington*, 764 So. 2d 1089 (La. Ct. App. 2000)**

– **Holding:** Tenant bears the risk

- Contract language clear and unambiguous
- “Acts of God” among the “risks” assumed by the tenant
- Tenant’s right to put up electrical fence not included in landlord’s responsibility to convey “peaceable possession” to tenant

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Tenant’s Right of Possession

- **Owner can’t use land for the owner’s purposes without tenant’s permission**

– Hunting

- **Tenant is responsible for the leased premises**

– Fences

- *Reynolds case* (2002)

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Tenant’s Right To Harvest Crops

- **What if the land is sold or the tenant dies before the crop is harvested?**

- **What if a crop is growing at the time of lease termination?**

– Tenant gets the crop if termination not tenant’s fault

– Written lease can specify otherwise

- But be careful with the written language
- *Meairs v. Watson* (2015)

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Doctrine of Emblements

- **Taggart v. Battaglia, 140 Or. Ct. App. 585, 915 P.2d 1001 (1996)**

- **Facts:** Defendant was a Christmas tree farmer that operated a leased Christmas tree farm. Defendant failed to make lease payments, but landlord did not terminate the lease. Plaintiff purchased the farm from the landlord's estate and defendant executed a quit claim deed giving up all interest in the land. During the next Christmas season, defendant reentered the premises and harvested nearly 200 trees.
- **Issue:** Does the doctrine of emblements allow the defendant to harvest the trees?

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Doctrine of Emblements

- **Taggart v. Battaglia, 140 Or. Ct. App. 585, 915 P.2d 1001 (1996)**

- **Conclusion:** No. Defendant terminated the lease by executing a quitclaim deed. Doctrine of emblements does not apply when the tenant terminates the lease. The execution of the deed also conveyed the growing crop to the buyer.

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Statute of Frauds and Agricultural Leases

- **Agricultural leases as personal service contracts**

- What happens if either the tenant or the landlord dies during the term of the lease?
 - If landlord dies, heirs assume the lease
 - *Giltner v. Estate of Giltner* (Iowa 2008)
 - What if tenant dies?

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**Ames v. Sayler, 267 Ill. App. 3d 672, 642 N.E. 2d 1340 (1994)**

- **Facts:** Parties entered into an oral lease of farmland. After 20 years, the tenant died.
- **Issue:** May the tenant's heirs assume the lease?

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**Statute of Frauds and Agricultural Leases**

- **Ames v. Sayler, 267 Ill. App. 3d 672, 642 N.E. 2d 1340 (1994)**
 - **Conclusion:** The lease dies with the tenant. A farm tenant's heirs are not entitled to continue to lease the property after the tenant's death until receiving statutory notice of termination.
 - The landlord contracted for the deceased tenant's services only. The lease is a personal services contract.

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**Distinguishing Ames v. Sayler**

- **Wilson v. Fieldgrove (Neb. 2010)**
 - Oral cash lease and death of tenant
 - No statutory notice requirement
 - Common law – 6 months
 - Sharecrop leases are generally personal service contracts
 - Cash leases do not die with the tenant
 - Tenant's services not involved

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Doctrine of Emblements

- **Death of the landlord with a growing crop in the field**
 - Landlord owns a fee simple
 - Landlord's heirs succeed to landlord's share of the crop
 - Landlord owns a life estate (issue is who gets the deceased landlord's share – the estate or the holder of the remainder?)
 - Growing crops generally held to be personal property – landlord's crop share becomes personal property of landlord's estate (KS approach)
 - Note: Colorado and Oregon courts have held otherwise

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Controlling Noxious Weeds

- **Duty to control is on the party that either owns or supervises the property**
 - Both tenant and landlord are responsible
 - New KS noxious weed statute was revised effective 1/1/21

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Permanent Improvements

- **General rule is that permanent improvements belong to the landlord**
- **The question is whether the improvement has become part of the real estate**

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Liability

- **General rule – tenant is liable**
 - Control is the issue
 - Landlord can become liable

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Assignment

- **Tenant cannot assign or transfer lease without landlord's permission**
 - Voidable
 - Landlord can re-enter, take possession and remove new "tenant" upon 10 days' notice

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Sale of Leased Property

- **New owner normally takes the property subject to the existing lease**
- **Tenant need not agree to be the tenant of the new owner**
- **If tenant already paid rent, no need to pay new owner for same time period**
- **Selling landlord can require tenant to pay for any past due rent caused by tenant's abandonment of property before the sale**

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Nonpayment of Rent

- **If late three months, landlord can terminate lease on 10-days' written notice**
 - Tenant might pay during the 10 days
- **Unpaid rent gives landlord a lien on "crops" growing on or harvested from the leased premises**
 - Superior to prior existing security interests on crops
 - Attaches to landlord's share of the crop (crop-share)
 - LL has right to possess crop until rent is paid
 - Cash rent – must file to perfect

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Requirement That Contracts Be In Writing

- **Statute of Frauds (English Parliament 1677)**
 - Certain contracts must be in writing to be enforceable
 - Marriage contracts
 - Surety contracts
 - Real estate contracts (except certain leases)
 - Part performance exceptions
 - Contracts that cannot be performed within one year
 - Contracts for the sale of goods worth \$500 or more
 - Contracts for "personal property" worth \$5,000 or more
 - Right-of-first refusal in real estate
 - Miscellaneous state requirements

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Ag Leases and the Statute of Frauds

- **Part performance**
 - Part performance (i.e. planting a crop) can remove the lease from the statute of frauds requirements
 - *Stuber v. Sowder* (Kan. 1935)
- **Promissory estoppel/detrimental reliance**
 - Possession by tenant may remove statute of frauds requirement
 - *Kolkman v. Roth* (Iowa 2003)
 - *Rhodes v. Sigler* (Illinois 1975)

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Notice of Termination of Oral Ag Leases

- **State law controls**
- **State lease law is quite different from state to state**
 - Types of crops
 - Cropping seasons
 - Pasture lease rules may be different from crop lease rules (in some states, but not KS)

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Serving Notice of Termination

- **Serve on tenant personally**
 - Best to send by registered mail, return receipt requested, or certified mail
 - At tenant's usual place of business
 - Can be left at tenant's residence or by delivering a copy to a person over age 12 who resides on the leased premises
 - If none, can be posted in a conspicuous place
 - *Geren v. Geren (2001)*

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Oil and Gas Leases

- **Conveyance of the mineral interest by sale of the lease**
 - Oil and gas, while in the ground, are considered part of the realty
 - Rights can be conveyed by deed
 - Mineral interests may be severed from the surface
 - Upon sale of land, if no reservation made, presumption is that no severance has occurred
 - Many landowners prefer to retain ownership of surface and lease the mineral rights

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Oil and Gas Leases

• Power to sell or lease

- Majority owners of mineral interests protected if one or more of holders of minority interests becomes unknown
 - District court appoints a receiver who can negotiate for sale or lease of the interest
- Owners of less than fee interests must usually join in executing an oil and gas lease

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Oil and Gas Leases

• What if surface leased for crop production?

- Crop tenant could recover damages from landlord for damage to tenant's crops or for interference with tenant's use of the surface by the oil and gas operator
 - Landlord could reserve right to lease for oil and gas or could have oil and gas lease made subordinate to surface for drilling
 - If ag lease granted first, subsurface tenant may need to get ag lease tenant's permission before drilling can commence

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Oil and Gas Leases

• Contractual provisions

- Use of surface
 - Lessee typically has right to enter land and explore for minerals (drill) and begin production if discovered
 - Includes implied right to use as much of surface as is reasonably necessary to exercise development rights (i.e., laying pipelines, building roads, constructing buildings)
 - May need additional contract language to restrict location of wells and/or structures
 - May want provision requiring lessor's approval concerning location of wells, structures and roads

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Oil and Gas Leases

• Contractual provisions

- Water use clauses tend to be broad
 - Landowner may want to limit use of water by operator
 - Reserve all fresh water or limit operator's use to such amounts as will not interfere with landowner's usage
 - Limit usage to primary production activities
 - No interference with landowner's use or intended use for irrigation purposes
 - Drilling operations not to interfere with irrigation practices during irrigation seasons and until crops harvested

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Oil and Gas Leases

• Contractual provisions

- Surface damage clauses
 - Protects landowner against damage to the surface (without the clause, lessee has no liability except for excessive use or negligence)
 - Landowner may want clause requiring lessee to restore surface to original condition
 - Note: State law may require lessee to remove all equipment and structures and to leave land in original condition upon abandonment of an oil or gas well
 - Additional concern may be location of pipelines that might interfere with farming activities

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Oil and Gas Leases – Surface Damage Clauses

• *Trotter v. Wells Petroleum Corp., 11 Kan. App.2d 679, 732 P.2d 797 (1987)*

- **Facts:** The plaintiff purchased land with oil production and leased the land to the defendant. The defendant buried a pipeline under the plaintiff's pasture and in the process damaged the pasture grass. The lease contract stated: "Lessee shall bury his pipe below plow depth and promptly cover and level all pits" and "Lessee shall pay all damages caused by its operations to growing crops...."
- **Issue:** Is the plaintiff's pasture a "growing crop" that is subject to the damage provisions of the lease?

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Oil and Gas Leases – Surface Damage Clauses

- ***Trotter v. Wells Petroleum Corp., 11 Kan. App.2d 679, 732 P.2d 797 (1987)***
 - **Conclusion:** No. No evidence was offered to indicate the defendant in any way cultivated or worked the pasture so as to alter its natural growth. A reference to “plow depth” in connection with “growing crops” only covers crops resulting from planting, cultivation and labor.

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Oil and Gas Leases

- **Common contract clauses**
 - Term usually for a definite term of 2 to 10 years, and so long thereafter as oil and gas is produced in paying quantities
 - “Delay rental” clauses
 - Tenant must either start drilling within a fixed time (usually a year) or pay a stipulated amount for the privilege of extending the lease for an additional period
 - “Unless clause”
 - Lease terminates unless operator either begins drilling or pays the delay rental
 - Some leases require written notice of termination

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Oil and Gas Leases

- **Common contract clauses**
 - Pooling clause
 - Pooling –putting together tracts or parts of tracts to form a drilling unit
 - Pooling clauses may not be required under state law (but may be entered into voluntarily)
 - » Typical acreage unit for gas is 640 acres
 - » Lease likely to remain in force if lessee operating either land covered by lease or other land pooled with it

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Oil and Gas Leases

- **Common contract clauses**

- Unitization clause

- Bringing together producing properties over a producing reservoir so a single operator can maximize production from that reservoir
 - Note: State law may establish a procedure whereby unitization may be ordered by a state agency in limited circumstances involving secondary recovery activities

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Oil and Gas Leases

- **Common contract clauses**

- Royalty provision

- Landowner's share is usually 1/8 to 3/16 of gross production
 - Operator usually pays all expenses of exploring and producing oil and gas from operator's share ("working interest")
 - For oil, royalty usually paid "in kind" and lessee purchases landowner's share based on market value
 - For gas, royalty usually paid under long-term contract

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Oil and Gas Leases

- **Common contract clauses**

- Storage provision

- Payment may be made to owner for storage, even in absence of drilling
 - Payment may be low in light of possible interference with surface use
 - Lease may contain clause allowing lease to remain in effect so long as gas storage continues
 - » Complete flexibility to lessee in continuation of lease, but no compensation to landlord for use in gas storage
 - » May want to negotiate a separate agreement

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Oil and Gas Leases

- **Common contract clauses**

- Surrender clause

- Provides a means of relieving lessee of any obligations once it is apparent that lease is no longer profitable
 - Forfeiture could occur simply on failure to drill or failure to pay delay rental
 - Typically gives lessee right to remove machinery and other structures
 - Should be in writing and filed with Register of Deeds so that title to premises will be unencumbered in the future

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Wind Energy Leases (Suggested Provisions)

- **What part of the land is subject to the agreement?**
- **What events trigger early termination?**
- **Automatic renewal clause?**
- **When must construction commence?**
- **Compensation for land use restrictions?**
- **Landowner's rights to use the property?**
- **USDA farm program complications?**
- **Liability for actions of third parties**

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Hunting Leases

- **Key consideration**

- Potential liability sustained or caused by hunters on the property
 - Recreational use statutes vary from state to state

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Hunting Lease

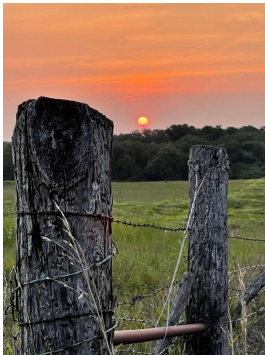
- **Not really a lease, but a license to use the property for hunting purposes**
 - Contract right to use defined by the parties
 - Get it in writing
 - Identify parties
 - Property description
 - Types of hunting allowed and when allowed
 - Termination provision
 - Renewals?
 - Liability waiver and indemnification
 - Payment terms

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Kansas Fence Law



WASHBURN LAW 53

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Rural Fences

- **Primary issues:**
 - “Partition”
 - Construction and maintenance
 - Liability for damages caused by escaped livestock
 - Fence viewers
 - Stray animals

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Partition Fences and Location Issues

- A partition fence is to be placed on the line between tracts of land owned by different persons.
- But, it can be located entirely on one side of the boundary
 - This can become the actual boundary via passage of time
 - In ag, usage of property may determine a boundary more often than does a survey.

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Adverse Possession

- Landowner may acquire title to property by making an open and notorious use of the property for 15 years.
 - Applies when adjacent parties *know the existing fence is not on the boundary* and one party is benefitted by the misplaced fence
 - Elements:
 - To adversely possess a property in Kansas, you must have openly, exclusively, and continuously been in possession of the real property knowingly adverse to the true property owner

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Doctrine of Practical Location

- Applies whether the parties know the existing fence is not on the boundary, but don't know where the boundary is located
 - After 15 years, the usage of the fence in this location can cause it to become the boundary

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Building and Maintenance of Partition Fences

- **The equal share rule (but it's not halves)**
 - "...so long as the parties continue to occupy or improve such lands, unless otherwise agreed."
 - Can modify by agreement
 - Can enter the neighboring land at reasonable times and in reasonable manner to maintain fence
 - "Reasonability" is a fact-based determination
- **The reality – "right-hand" rule**
- **Is there a written fence agreement?**
 - Can record it to bind current and subsequent owners

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Fence Laws and Trespassing Livestock

- **Fence law theories**
 - Common law approach - failure to keep livestock on property subjects owner to liability
 - "Fence-in" theory (Kansas approach)
 - "Fence-out" theory
 - Some western states required landowners to construct fences around their property to "fence out" trespassing livestock before damages can be collected
 - If livestock trespasses within a lawful enclosure, the owner is strictly liable for the damages, no proof of negligence is necessary

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Fence-In Jurisdiction

- **Livestock owners must keep their animals fenced in**
- **But, there's a limitation...**
 - Equal share rule

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Fence-In, But.....

- **What if a livestock owner shares a fence with a crop farmer?**
 - Crop farmer doesn't want to share equally in the cost of building and maintenance
 - Can bar recovery of damages if livestock escape part of fence crop farmer was responsible for
 - Can be responsible to others for trespassing livestock damage

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What if Non-Livestock Owner Doesn't Want Land Enclosed?

- **Cannot be forced to build or pay for equal share of partition fence, if...**
 - Adjoining tracts are used in common (i.e., for the same purpose (such as crop raising))
 - Two requirements
 - One party doesn't want a partition fence; and
 - The adjoining tracts are used to grow crops
 - Statute only applies to relieve a landowner from the responsibility for sharing equally the cost of building and maintaining partition fences when the land is used in common, and the complaining party does not want the fence.

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Handling Fence Disputes

- **What if the parties can't agree on fence building and/or maintenance?**
 - Negotiate a fence agreement and have it recorded
 - Resolve the matter privately
 - No agreement?
 - Call the fence viewers
 - **County commissioners (or their designees) in county where fence located**
 - » **What if fence is on county border?**
 - Chairman of each county board; if can't agree, then a third viewer is selected from the county fence viewers in the counties
 - Decision must be recorded in land records of each county

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Handling Fence Disputes

- **Decision of fence viewers must be by majority vote**

WASHBURN LAW 64

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Fence Viewers

- **Commissioners may act as a board collectively, or any two of them may be appointed**
 - Act upon application of landowner for a view
 - Viewers only have jurisdiction over *building and maintenance* disputes
 - Cannot order an existing fence to be moved
 - After view, will assign to each party, in writing, an equal share or part of the fence to build, maintain or repair.
 - Decision is recorded in county Register of Deeds office

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Fence Viewers

- **If acting as “fence viewers,” decision is final, conclusive, non-appealable and binding on parties and all succeeding occupants of the land**
- **If commissioners do not appoint “any two of them,” any decision is deemed to be a board decision**
 - Triggers normal appeal rules
 - Notice of appeal served on board’s clerk within 30 days; appealing party must provide a bond and pay necessary costs

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Fence Viewers

- **What if a party doesn't abide by the decision of the viewers?**
 - Other party may erect, repair or maintain the entire fence and charge the non-performing party for its share of the cost of the fence, plus interest (1%/mo.) and att'y fees if legal action needed to collect

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Procedure – The Riley County Saga

- ***Kunze v. Schwartz (2001)***
 - Call viewers
 - Viewers make decision
 - One party doesn't comply
 - Call viewers again to make second view to determine that fence needs built/repared
 - Building/maintenance conducted
 - Viewers make third view to certify work and amount claimed due
 - Nonperforming party billed

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What Type of Fence Can Be Required?

- **Legal fence in the county**
 - Barbed wire with at least 3 wires
 - Other types listed in statute
 - At discretion of viewers, a brook, river, creek, ditch and equivalent constructs may be deemed to be a legal fence.
 - County commissioners can enact more stringent legal fencing requirements on a countywide basis

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Fence-In Jurisdictions

- If livestock escape a fence that is in good repair, the owner is generally *not* liable for any resulting damages absent a showing of negligence. Evidence of negligence
 - Gates left open
 - Fence improperly constructed or maintained
 - Knowledge that animals are in heat and not constructing a stronger enclosure
 - Knowledge that animals are out and not attempting to return them

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Distrain

- What if animals trespass onto another owner's property and cause damage?
 - Can retain the animals until payment made for damages, plus reasonable costs
 - Owner must be notified within 24 hours
 - Once notice given, can only hold for 5 days without bringing legal action against owner
 - Alternatively, Sheriff can take animals into custody and give notice.
 - 10 days to reclaim and pay costs
 - If not reclaimed, sold at auction

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Srays (owner not known)

- Sheriff notified within 24 hours
- Party finding them gets an agister's lien for feed and care costs

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Fence Laws and Trespassing Livestock

- **Moving livestock on a public roadway**
 - Usually permissible if animals are under control
 - Stock owner is typically strictly liable for any damages.

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Railroad Fences

- **Landowners do not have any responsibility to build or maintain railroad fences**
 - Railroad is responsible for damages caused to livestock (fault not an issue)
 - Can avoid liability by enclosing tracks with fencing
 - Adjacent landowners can require railroad to enclose right-of-way with lawful or hog-tight fence
 - Some states fine railroads for refusing to build fences
 - Other states allow the landowner to be reimbursed for costs plus interest for building a fence
 - Failure by a railroad to maintain a fence at a public road crossing makes the railroad liable, unless the animals were on the track through a willful act of the owner

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Highway Fences

- **The farmer is responsible for maintaining the inner fence and the state department of transportation is responsible for maintaining the outer fence**
 - The land between the fences causes weed control problems

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Highway Fences

- **What responsibility does the state have to the motoring public with respect to building and maintaining highway fences?**
 - Must they maintain a “cattle-tight” fence?
 - Must they fence the entire road frontage of a particular parcel?

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Public Roads Through Private Pastures

- **May exist by authorization of county commissioners**
 - Can permit a gate and fence to be place across certain public roads
 - Cannot authorize locking of a gate that would bar the general public from accessing the road
 - Auto gate or cattleguard

WASHBURN LAW 77

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Highway Fences

- **KDOT has a common law duty to keep the highways in a reasonably safe condition**

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Highway Fences

- **Reynolds v. KDOT, 30 P.3d 1041 (Kan. Ct. App. 2001)**
 - **Facts:** Tenant grazed cattle in pasture on west side of highway. A highway fence constructed by KDOT was built up and around a double-box culvert. The tenant fenced the mouth of the culvert, but fence would wash out periodically and cattle would escape to orchard on other side of road. The fence on the east side of the highway was in disrepair. A car struck a cow on the road killing one occupant and injuring another.
 - **Issue:** (1) Does KDOT have a statutory duty to maintain cattle-tight fences? (2) Was KDOT negligent in not repairing a damaged highway fence?

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Highway Fences

- **Reynolds v. KDOT, 30 P.3d 1041 (Kan. Ct. App. 2001)**
 - **Holding:** (1) KDOT does not have a duty to maintain cattle-tight fences. Highway fences are to control vehicular access to roadway, not to keep livestock in; (2) KDOT not negligent for not repairing damaged highway fence. There was no evidence that the cows escaped other than through the unfenced culvert and KDOT has no duty to fence off mouths of culverts.
 - Trial court judgment for plaintiff of approx. \$1.2 million reversed.
 - **Note:** Kansas Supreme Court later reinstated the jury verdict. - state has a duty to maintain highway fences to keep livestock off public roadways

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Civil Liabilities

- **Cow/vehicle accident**
 - **Lee v. Kaup Kattle Co., 2022 U.S. Dist. LEXIS 93306 (D. Kan. May 24, 2022)**
 - Accident on I-70 near Goodland.
 - Plaintiff traveling 80 mph at night with some visibility issues.
 - Dead cow in interstate
 - Negligence and comparative fault claims
 - Defendant denied s.j. on negligence claim
 - Partial s.j. on comparative fault (unknown trespasser?)
 - KDOT did not breach its duty of care

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 THANK YOU!

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