

Ranching 101: Agricultural Leases



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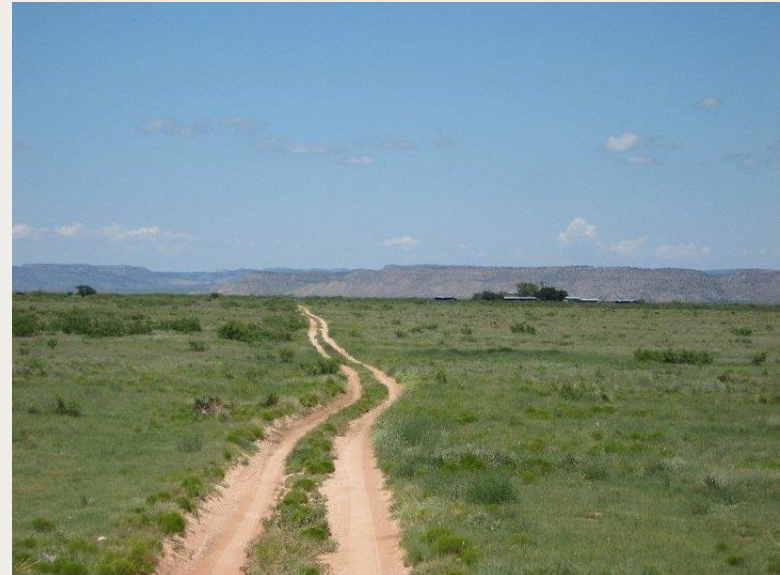


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This presentation is for educational purposes only as well as to give general information and a general understanding of the law, not to provide specific legal advice. This presentation does not create an attorney/client relationship and should not be used as a substitute for the advice of a licensed attorney.

Road Map

- Why lease land or livestock?
- Setting the payment rate for a lease.
- Why a written lease is necessary?
- Grazing lease tips
- Hunting lease tips
- Livestock lease tips
- Landowner liability basics
- Landowner liability statutes
- Drafting liability releases





Why lease land?

Why lease land?

Landowners

- **Additional source of cash flow**
 - Gain liquidity from equity in owned land
 - Build equity in mortgaged land
 - Potentially important source of income for “farmers emeritus”
- **Can aid landowner in maintenance of land**
- **Take advantage of alternative (agricultural use) valuation**
- **Hunting leases – additional simultaneous use of land**

Why lease land?

Operators

- **“Land’s expensive, man!”**
 - Does not require down payment
 - Obtaining mortgage may be difficult (especially for beginning farmers)
 - Avoids payment of interest, taxes
- **Beginning producers can access expertise of landowners**
- **Can grow or shrink as needed**
- **“Try before you buy”**



Calculating Payment

Three Most Common Arrangements

- Cash lease
 - Crop share lease
 - Flex/Hybrid lease
-
- NOTE: Your choice here may impact you other places like the FSA office, with the IRS, and when it comes to your social security check!

How much should I charge?

- Really depends on the facts.
- Talk to CEA, landowners, producers in your area.
- Numbers from the Government
 - 2016 Texas state averages from USDA/NASS:
 - Pastureland: \$6.80/acre
 - Non-irrigated cropland: \$27.00/acre
 - Irrigated cropland: \$90.00/acre

How much should I charge?

(cont.)

- 2016 Blacklands Region averages:
 - Pastureland: \$12.50/acre
 - Non-irrigated cropland: \$26.50
 - Irrigated cropland: \$74.50
- 2016 Tarrant County averages from USDA/NASS:
 - Pastureland: \$9.00
 - Non-irrigated cropland: \$22.00
 - Irrigated cropland: None reported

Why is a written lease necessary?

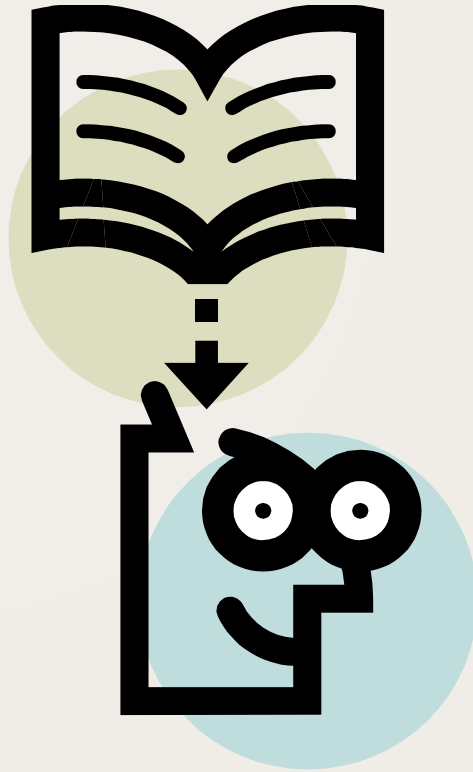


1. The law says so...sometimes.

- Generally, an oral contract is valid under TX law.
- The “Statute of Frauds” says there are certain contracts that must be in writing to be enforceable:
 - Contract for the sale of real estate.
 - *Lease of real estate lasting one year or more.*
 - Agreement not performed within a year.
 - Loan agreement exceeding \$50,000.
 - Agreement to pay commission for the sale or purchase of oil or gas lease or royalty, minerals, mineral interest.
 - Sale of goods or services for more than \$500.
 - Agreement made in consideration of marriage.

2. The exercise of writing it down is helpful!

- Questions and issues come to you when you've got a pencil in your hand.



3. If you end up in court, you want a written document.



4. A tenant may want to record a lease in the county records.

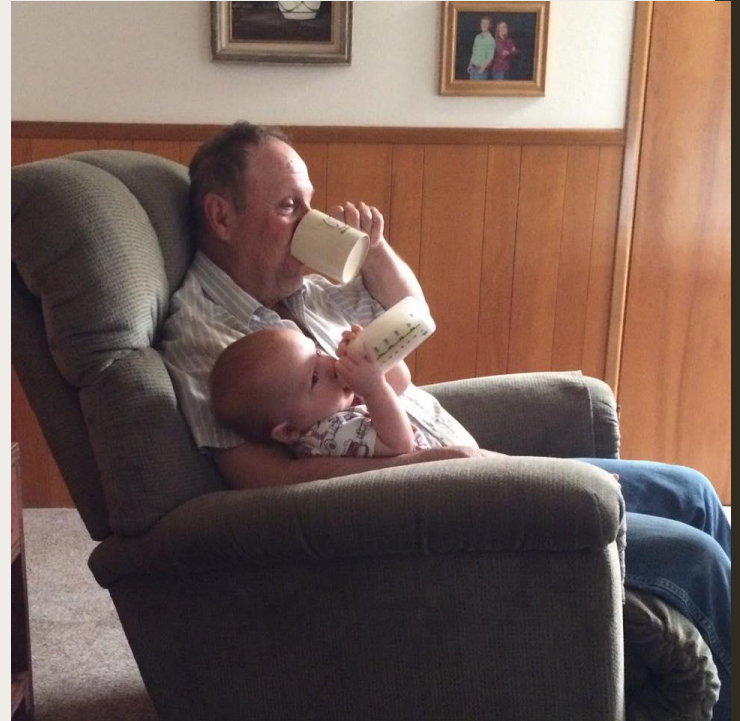
- No requirement that a lease be recorded.
- Why would a tenant want to do so?
 - Puts people on notice that lease exists
 - If property changes ownership during lease term:
 - Lease controls
 - Lease continues if the new purchaser is put on notice.
 - Actual notice
 - Constructive notice
 - Record notice.

5. You never know what might happen.



My Father's Favorite Section

- Assignment/subleasing
- Choice of law
- Forum clause
- Dispute resolution clause
- Attorney Fee provision



Grazing Lease Pointers



1. Set a stocking rate.

- Landowner wants this term, tenant probably does not.
- Size of animals
- Consider using animal unit measurement
- This number may need to change based on drought or wildfire...

2. What may be done on the property?

- If limitations are not included, they do not exist.
- State that lease is for grazing cattle/sheep only.
- Are any areas that are off limits to the tenant?
- Save yourself a tense situation in November....

3. Maintenance of fixed assets.

- Who will maintain during lease term?
- Fences—require periodic inspection and immediate repair if damage.
- Landowner—generally not liable for injuries during lease, but can be liable for failing to make promised repairs or making inadequate repairs.

4. Let's talk mineral estates.

- Is there a mineral lease in place or being negotiated?
- Mineral estate (and now groundwater estate) is the dominant estate in Texas.
- The mineral owner has the right to use as much of the surface estate as is reasonably necessary to produce oil and gas.
- Terms in the mineral lease itself can change/limit this right, but it could really impact a tenant.
- Consider a term that allows tenant the right to cancel lease and get pro rata refund if mineral production occurs.

Hunting Lease Pointers



1. Require EVERYONE to sign lease and waiver.

- Cannot terminate lease or sue for breach of contract unless person was a party to the lease itself.
- Consider a term allowing only lessee to enter and require any other parties be approved in writing by the landowner.
- Obtain written releases prior to them entering the property.

2. Limitations on hunting methods.

- Can they use tree stands? Deer blinds?
- Certain types of weapons prohibited?
- Can ATV's be used on the property?
- Which brings up a good point...insurance.
 - Most common insurance claim related to hunting?
 - Second most common?
 - Be sure your liability policy provides coverage for hunters on the land.

4. Require lessee to follow all state and federal laws.

- Why should this be in the lease?
- If they break the law, they have breached the lease and you can recover damages.
- If you want the right to automatically terminate the lease, use the magic words “...or the lease shall terminate.”

5. Describe leased property & limitations.

- Consider including a map clearly showing leased land and any important areas.
- Where should property be entered?
- Will anyone else have rights?
- Consider requiring a security deposit in case there is damage.

Livestock Lease Pointers



Consider...

- Term of the lease and date of return.
- Who is liable if animal injured during transport to/from home?
- What happens if the animal dies during lease term?
- Condition of the animal on return.
- Liability clause
- Dispel creation of partnership.

Landowner Liability



Liability & Indemnification Clauses

- **Liability:** State that neither party is liable for the actions of, or damages caused by, the other party or his agents or employees.
 - Sample: *“Neither party shall be responsible for the debts or liabilities incurred, or for damages caused by the other party, his agents, employees, or visitors.”*
- **Indemnification:** Agreement that if one party is sued due to action/inaction of the other, the responsible party will defend and pay any judgments.
 - Sample: *“Lessee agrees to indemnify and hold Lessor harmless from all claims and causes of action resulting from or alleged to have resulted from the Lessee’s (or his agents, employees, or visitors) actions or omissions, including attorney’s fees and expenses incurred.”*

Basic Landowner Liability Law

- Two types of claims: Negligent act & premises liability.
- For premises liability based upon level of duty, which depends on the category of the injured person:
 - **Trespasser:** Duty not to intentionally injure.
 - **Licensee:** Duty to warn or make safe dangerous conditions known to the landowner but not obvious to the plaintiff.
 - **Invitee:** Duty to warn or make safe dangerous conditions known to the landlord, or of which the landlord should have discovered with reasonable inspection.

Recreational Use Statute



Recreational Use Statute: Summary

- Civil Practice & Remedies Code Chapter 75 (1965)
- Purpose is to encourage landowners to open private property to the public for recreational uses.
- Landowners are liable only for intentional acts or gross negligence if the statutory requirements apply.
- Requirements are:
 - Agricultural land (or non-agricultural land)
 - Plaintiff there for recreational purpose
 - One of the three listed monetary requirements

RUS: Agricultural Land

- Texas land “suitable for”:
 - Use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed;
 - Forestry and the growing of trees for the purpose of rendering trees into lumber, fiber, or other items for commercial, industrial, or personal consumption; or
 - Domestic or native farm or ranch animals kept for use of profit.
- Agricultural land receives more protection than non-ag land:
 - Limited liability applies to social guests on ag land.
 - Attractive nuisance cannot be claimed for anyone over 16.
 - Cap on damages only applies to agricultural land.

RUS Requirements: Recreational Use

- Broad definition:
 - Hunting
 - Fishing
 - Swimming
 - Boating
 - Camping
 - Picnicking
 - Hiking
 - Pleasure driving
 - Nature study
 - Cave exploration
 - Waterskiing and other water sports
 - Biking
 - Disc golf
 - Walking dogs
 - Radio control flying and related activities
 - “any other activity associated with enjoying nature or the outdoors.”
- Key is what plaintiff was doing when injured.

Recreational Use (continued)

- Activities included:
 - Playing on playground equipment
 - Playing sand volleyball
 - Visiting a zoo
 - Falling in a clubhouse at a golf course
- Activities NOT included:
 - Attending an outdoor wedding
 - Spectating at an outdoor sporting event
 - Social guests on non-ag land
 - Walking through outdoor area



RUS Requirements: Monetary

- Landowner did not charge a fee; or
- Total charges collected over the past calendar year are not more than 20 times the total amount of ad valorem taxes imposed on the premises for the previous calendar year; or
 - Calculate taxes on all property owned by the defendant.
- Has liability insurance coverage of \$500,0000 per person, \$1 million per occurrence of bodily injury or death, and \$100,000 for injury to property.
 - For agricultural land, the total liability is capped at these amounts.

Agritourism Act



Agritourism Act: Summary

- Civil Practice & Remedies Code Chapter 75A (2015)
- Purpose: Encourage economic development by encouraging operators of farms, ranches, and rural attractions to open them up to the public.
- Requirements:
 - Agritourism entities are not liable
 - Plaintiffs there for recreational or educational purpose
 - Proper sign and/or release language used
 - Subject to numerous exceptions

Agritourism Act: Definitions

- **Agritourism entity:** Person engaged in business of providing an *agritourism activity*, including displaying exotic animals on ag land, without regard to compensation.
- **Agritourism activity:** Activity on *agricultural land* for a *recreational* or educational purpose, regardless of compensation.
- **Agricultural land:** land “suitable for”:
 - Use in production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture or planting seed; or
 - Domestic or native farm or ranch animals kept for use or profit.
- **Recreation:** Same definition as Recreational Use Statute.

Agritourism Act: Signage

- Must be posted and maintained in a “clearly visible location on or near any premises on which an agritourism activity is conducted.”

WARNING

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

Agritourism Act: Release Language

- Must be signed before the agritourism activity,
- *By the participant or their parent, guardian, or managing conservator,*
- Document separate from any other agreement other than a different warning, consent, or assumption of risk statement, and
- Printed in not less than 10 point bold type.

AGREEMENT AND WARNING

I UNDERSTAND AND ACKNOWLEDGE THAT AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AGRITOURISM ACTIVITIES. I UNDERSTAND THAT I HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY DAMAGE, AND OTHER LOSS THAT MAY RESULT FROM AGRITOURISM ACTIVITIES.

Agritourism Act: Exceptions

- Plaintiff is employee of agritourism entity
- Intentional acts
- Injury proximately caused by:
 - Entity's negligence evidencing a disregard for the safety of an agritourism participant;
 - One of the following dangers of which the entity knew or should have known:
 - Dangerous condition on the land, facilities, or equipment used in the activity;
 - Dangerous propensity, that is not disclosed to the agritourism participant, of a particular animal used in the activity; or
 - Entity's failure to train or improper training of an employee actively involved in the agritourism activity.

Farm Animal Liability Act



Farm Animal Liability Act: Summary

- Civil Practice and Remedies Code Chapter 87 (1995)
- Purpose is to limit liability for inherent risks with farm animals.
- Requirements:
 - Persons are not liable for damages to
 - Participant in a farm animal activity or livestock show
 - If injury results from risks inherent to farm animal activity or livestock show
 - Subject to numerous exceptions

FALA: Definitions

- **Farm animal:** Equine, bovine, sheep, goat, pig, ratite (ostrich, rhea, emu), chicken or other fowl.
- **Farm animal activity:**
 - farm animal show, fair, competition, performance, rodeo, event, or parade involving a farm animal;
 - Training or teaching activities involving a farm animal;
 - Boarding a farm animal;
 - Riding, inspecting, evaluating, handling, loading, or unloading a farm animal belonging to another;
 - Informal farm animal activity including a ride, trip or hunt,
 - Shoeing a horse,
 - Veterinarian examining or treating an animal

Definitions (continued)

- **Engaging in a farm animal activity:** Riding, handling, driving, loading, unloading, assisting in medical treatment of, being a passenger on, or assisting a participant or sponsor with an animal.
- **Farm animal professional:** Person engaged for compensation in instructing a participant or renting to a participant an animal, equipment or tack, or who provides veterinary or farrier services.
- **Livestock show sponsor:** Group that organizes & sanctions a livestock show.

Important Issue: Employees?

- Houston (1st): Does not apply where injured party is employee.
- Houston (14th): Not limited to consumers.
- Corpus Christi: Applies to limit liability where independent contractor injured.

FALA: Inherent Risks

- Statute specifically includes:
 - Propensity of an animal to behave in ways that may result in injury;
 - Unpredictability of farm animal's reaction to sound, sudden movement, or unfamiliar object, person, or animal;
 - With respect to equine activities, certain land conditions and hazards including surface and subsurface conditions;
 - Collision with another animal or object; or
 - Potential of a participant to act negligently that may contribute to an injury of another.
- Broad definition—any risk inherent to farm animal activity.

FALA: Language for Farm Animal Professionals

- Must post if maintain a stable, corral, or arena where professional conducts a farm animal activity.
- Clearly visible location on or near stable, corral, or arena.
- Must include in all contracts for professional service, instruction, or rental of equipment, tack, or farm animals.
- Must be clearly readable
- Language:

WARNING

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

FALA: Language for Livestock Show Sponsors

- Must post if maintain a stable, barn, corral, or arena at which a livestock show occurs.
- Clearly visible location on or near stable, barn, corral, or arena.
- Must include in all contracts with livestock show participants.
- Must be clearly readable.
- Language:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A LIVESTOCK SHOW SPONSOR IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN A LIVESTOCK SHOW RESULTING FROM THE INHERENT RISKS OF LIVESTOCK SHOW ACTIVITIES.

FALA: Exceptions

- Injury caused by faulty equipment or tack provided by defendant who knew/should have known it was faulty;
- Defendant provided animal to the person and did not make a reasonable and prudent effort to determine ability of participant to safely engage in activity & to safely manage the animal;
 - Does not require “formal, searching inquiry”
- Injury caused by dangerous latent condition of the land owned/controlled by defendant for which warning signs, notices, or verbal warnings were not provided and defendant knew of the condition;

Exceptions (continued)

- Defendant acted with willful or wanton disregard for safety of the participant;
 - Want of care indicating conscious indifference to welfare of persons affected.
- The person intentionally caused the injury;
- For stock shows, the injured party was invited or allowed to participate in the activity but the person was not registered or assisting a registered participant.

Drafting Liability Releases

- General Rule: Texas will enforce releases if properly drafted.
- Extremely complicated issue—*please* see an attorney!
- Release must be:
 - Express
 - “Release any and all claims against the landowner including claims for negligence, gross negligence, and strict liability.”
 - Signed near the time of the injury.
 - Specifically addresses activity.
 - Conspicuous
- Unanswered questions:
 - Can a party waive liability for gross negligence?
 - Can a parent/guardian waive liability for a minor?



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Jury Finds AQHA Clone Ban Violates Antitrust Laws

Posted on August 5, 2013 by tdowell



Last week a federal jury found that an AQHA rule prohibiting registration of cloned horses violated state and federal antitrust laws. The AQHA has announced that it will appeal this decision. The AQHA Rule REG 106.1 The AQHA is the world's largest equine breed registry and membership organization, having more than 5 million registered horses and over 280,000 members. The AQHA allows registration of quarter horses that are conceived by live cover, artificial insemination, and embryo transfer. In 2004, however, the AQHA implemented Rule 227 (the rule has since been re-numbered as Rule REG106.1),...

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