110.03 Domestic Animals Running At Large--Statutory Liability

An owner or keeper of an animal is liable in damages if his [e.g., horse] while running at large caused the injury or damage complained of, unless the owner or keeper did not know his animal was running at large and he used reasonable care in restraining it.

[A person is a "keeper" when he has the right to control the animal's movements or has knowingly and voluntarily undertaken to control the animal's movements.]

[An animal is "running at large" only if it strays from confinement or restraint and from the limits of the owner or keeper.]

Notes on Use and Comment revised November 2025.

Notes on Use

This instruction is based on a provision of the Domestic Animals Running At Large Act, 510 ILCS 55/1 (1994), which imposes liability for injuries and damages for allowing certain animals to run at large. Cities and villages may regulate the running at large of animals, 65 ILCS 5/11-20-9 (1994). Therefore, this source should be checked before this instruction is given.

This instruction should be used in an action to recover damages caused by animals grazing at pasture which are beyond the control and supervision of their keepers. *Moore v. Roberts*, 193 Ill. App.3d 541, 549 N.E.2d 1277, 140 Ill. Dec. 405 (4th Dist.1990); *Zears v. Davison*, 154 Ill. App.3d 408, 506 N.E.2d 1041, 107 Ill. Dec. 150 (3d Dist.1987). IPI 110.05 should be used when an animal breaks into an enclosure. IPI 110.02 (common law strict liability) and/or IPI 110.04 (statutory liability) applies when the animal is not grazing or is under the control of its owner or keeper. If, on the facts of the case, the Domestic Animals Running At Large Act (510 ILCS 55/1 (1994)) applies, then it is the exclusive remedy. *Abadie v. Royer*, 215 Ill. App.3d 444, 574 N.E.2d 1306, 158 Ill. Dec. 913 (2d Dist.1991) (*rev'd on other grounds, Corona v. Malm*, 315 Ill. App. 3d 444, 574 N.E.2d 1306 (2d Dist. 2000)); *Zears v. Davison*, 154 Ill. App.3d 408, 506 N.E.2d 1041, 107 Ill. Dec. 150 (3d Dist.1987); *McQueen v. Erickson*, 61 Ill. App.3d 859, 378 N.E.2d 614, 19 Ill. Dec. 113 (2d Dist.1978).

The second (bracketed) paragraph should be used if there is a fact issue as to whether the defendant qualifies as a "keeper" of the animal under the statutory definition added by P.A. 84-28, effective January 1, 1986 (510 ILCS 55/1.1 (1994)) as interpreted by the courts. The new statute defines an "owner" as "any person who (a) has a right of property in an animal, (b) keeps or harbors an animal, (c) has an animal in his care, or (d) acts as custodian of an animal." Since the issue will usually arise in the context of a defendant who is not the actual owner of the animal, the Committee has retained the term "keeper" to describe such persons.

The third (bracketed) paragraph should be used if there is an issue as to whether the animal was restrained or confined when it escaped. P.A. 84-28, effective January 1, 1986, added this definition of "running at large." 510 ILCS 55/1.1 (1994).

This instruction should be accompanied by appropriate issues and burden of proof instructions.

Comment

The statute upon which this instruction is based only prohibits certain kinds of animals

from running at large. Formerly, these were defined as "the species of horse, ass, mule, cattle, sheep, goat, swine, or geese." P.A. 84-28, effective January 1, 1986, made the statute applicable to "livestock" and defined the term "livestock" as "bison, cattle, swine, sheep, goats, equidae, or geese." ("Equidae" is the family of which "equus" is the only surviving genus. "Equus" comprises "horses, asses, zebras, and related ... animals . . . ." Webster's Third New International Dictionary 769 (1981).)

In defining the animals to which it applies, the statute has been literally construed. Thus, the statutory language does not encompass turkeys (*McPherson v. James*, 69 Ill. App. 337 (3d Dist.1897)) or ducks (*Hamilton v. Green*, 44 Ill. App.3d 987, 358 N.E.2d 1250, 3 Ill. Dec. 565 (2d Dist.1976)).

Keepers of horses or cows that escape their enclosure while grazing and wander into the road causing damage or injury are subject to liability under the statute. *McQueen v. Erickson*, 61 Ill. App.3d 859, 378 N.E.2d 614, 19 Ill. Dec. 113 (2d Dist.1978); *Zears v. Davison*, 154 Ill. App.3d 408, 506 N.E.2d 1041, 107 Ill. Dec. 150 (3d Dist.1987).

Plaintiff makes out a prima facie case by proving that a grazing animal escaped its enclosure and was running at large. Defendant can prevail only by showing that (1) he did not then know that the animal had escaped, and (2) he exercised reasonable care to keep it confined. While the prima facie case shifts the burden of going forward with the evidence to the defendant, the burden of proof on all elements remains on the plaintiff. *O'Gara v. Kane*, 38 Ill. App.3d 641, 348 N.E.2d 503 (5th Dist.1976); *Guay v. Neel*, 340 Ill. App. 111, 91 N.E.2d 151(1st Dist.1950); *but see, Corona v. Malm*, 315 Ill. App. 3d 692, 697, 735 N.E.2d 138, 142 (2d Dist. 2000) (holding "plaintiff need plead and prove only that he or she was injured by an animal running at large that was owned or kept by the defendant. The defendant must then affirmatively plead and prove (1) that he or she exercised due care in restraining the livestock, and (2) that he or she lacked knowledge that it had escaped.").

Persons Liable. A defendant who lived on rented property and boarded horses was considered a "keeper" of a horse that escaped and caused property damage when it was hit by a car. *Wakefield v. Kern*, 58 Ill. App.3d 837, 374 N.E.2d 1074, 16 Ill. Dec. 299 (2d Dist.1978).

On the other hand, in *Blakley v. Glass*, 342 Ill. App. 90, 95 N.E.2d 128 (1st Dist.1950) (abstract decision), the court held that a horse pastured in a host's enclosure during a social visit did not make the host a keeper. In *McEvoy v. Brown*, 17 Ill. App.2d 470, 150 N.E.2d 652 (3d Dist.1958), the court held that releasing and feeding a dog staked on a host's premises by guests did not make the host a keeper. In *Gahm v. Cave*, 194 Ill. App.3d 954, 551 N.E.2d 779, 141 Ill. Dec. 592 (3d Dist.1990), a calf escaped onto the defendant's property while being unloaded from the owner's trailer. The court held that the defendant was not a keeper under the statute because control and ownership of the calf remained with the calf owner during the unloading process. *Accord*, *Ward v. Ondrejka*, 5 Ill.App.3d 1068, 284 N.E.2d 470 (1st Dist.1972). In *Smith v. Gleason*, 152 Ill. App.3d 346, 504 N.E.2d 240, 105 Ill. Dec. 371 (2d Dist.1987), the court held that a complaint against a landowner under the statute was properly dismissed because he was not an owner or keeper of the animal. The landowner merely rented property to another who boarded horses as a business. Similarly, the owner of premises leased to another for pasture was not a "keeper" under the Act. *Heyen v. Willis*, 94 Ill. App.2d 290, 236 N.E.2d 580 (4th Dist.1968).

The statute did not apply when a horse broke through a racetrack enclosure at a county fair and ran through the crowd injuring plaintiff. *Moore v. Roberts*, 193 Ill. App.3d 541, 549 N.E.2d 1277, 140 Ill. Dec. 405 (4th Dist.1990). Nor did the statute apply when plaintiff, while riding defendant's horse, was killed by a cement truck when plaintiff lost control of the horse and it ran into the road. *Chittum v. Evanston Fuel & Material Co*., 92 Ill. App.3d 188, 416 N.E.2d 5, 48 Ill. Dec. 110 (1st Dist.1980). However, the court in *Abadie v. Royer*, 215 Ill. App.3d 444, 574 N.E.2d 1306, 158 Ill. Dec. 913 (2d Dist.1991) (*rev'd on other grounds, Corona v. Malm*, 315 Ill. App. 3d 444, 574 N.E.2d 1306 (2d Dist. 2000)), using language rejecting *Chittum*, held that the statute applied when the defendants' horse escaped from the barn and ran into the path of the plaintiff's car.