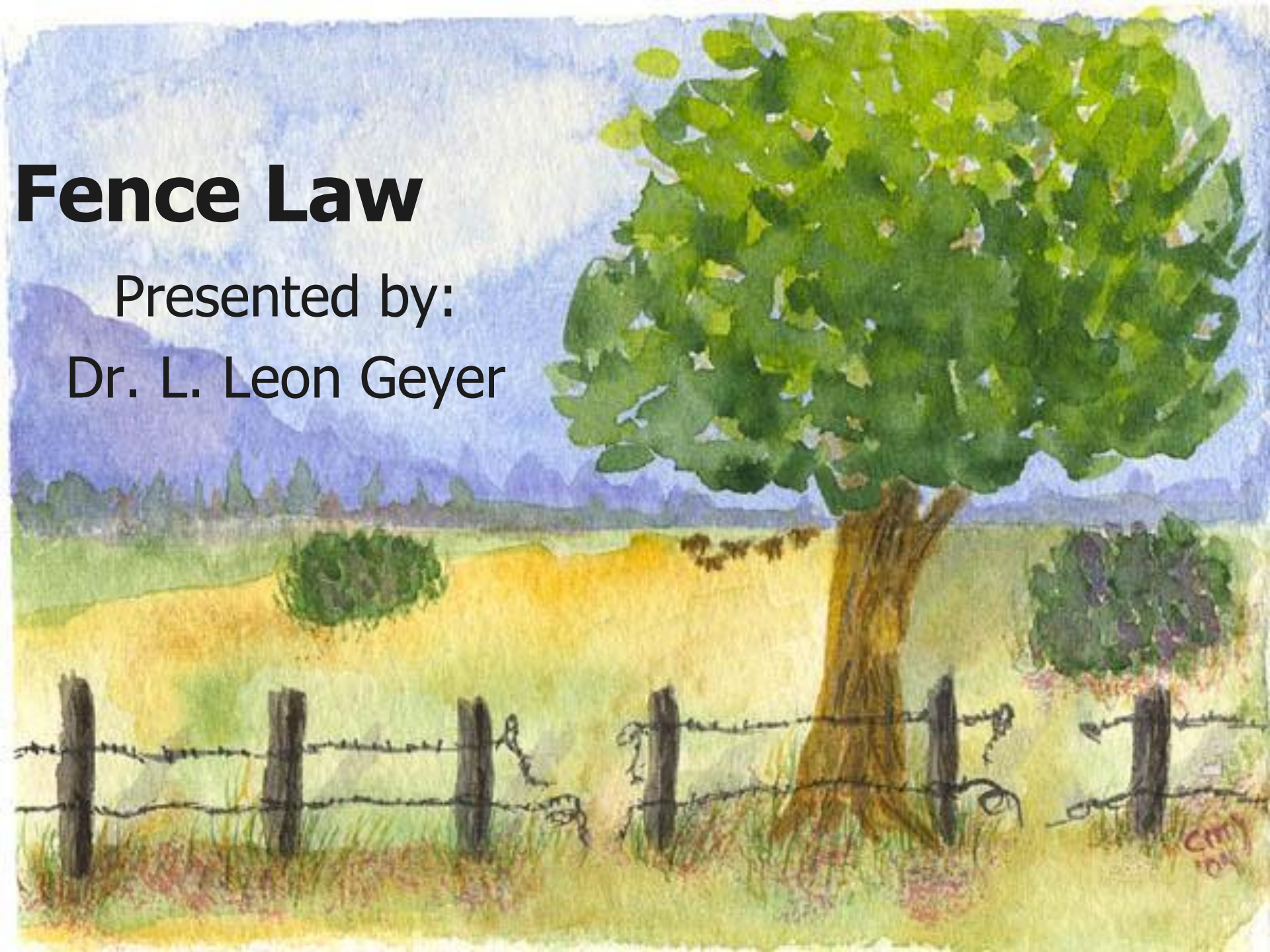


Fence Law

Presented by:
Dr. L. Leon Geyer





Virginia Fence Law



11/5/2014



County Presentation



Robert Frost, "Mending Wall"

There where it is we do not need the wall:
He is all pine and I am apple orchard.
My apple trees will never get across
And eat the cones under his pines, I tell him.
He only says, 'Good fences make good
Neighbors.'



Concepts

- Fence In v. Fence Out
 - Common Law v. Open Range
- Division Fence
 - Who pays
- Trespass of Cattle v. Negligence
- Cattle Guards
- And More



What is the purpose of a fence?

- What is the purpose of a fence?
 - Divide Property?
 - Tool of protection?
 - Promote Good Neighbors?
 - Keep Animals Apart?
 - Social Disease?
 - Keep animals from eating neighbor's grass?
 - Unwanted pregnancy?



Questions For you

- What are the fence duties of Virginia citizens to maintain “lawful” fences?
- What is a lawful fence in Virginia?
- Who is responsible for repairing and keeping up a fence in Virginia?
- Can you require your neighbor to share in the upkeep of the installation cost of a fence?
- Is an electric fence legal in Virginia?
- What can you do to prevent someone's cattle from entering your land or to recover damages should this occur?



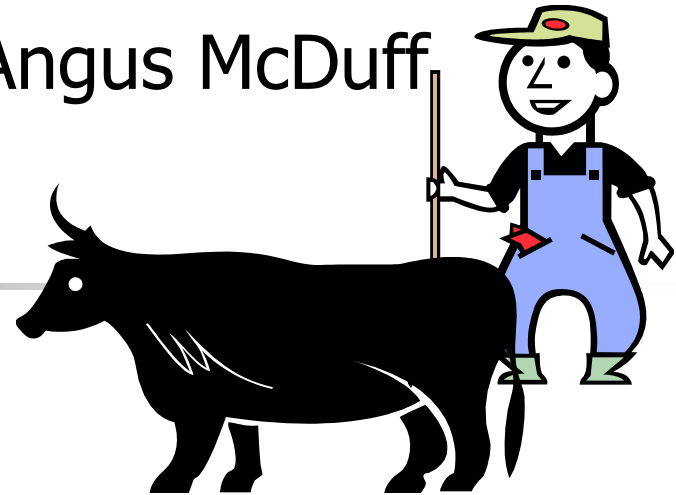
Fun issues

- When to replace? Repair v. replacement
- Cost of fence to build/ replace
- Right half left half
- Liable if animal passes your half
- Fence Viewers
- Tax impact of fence on Farmer and Homeowner?

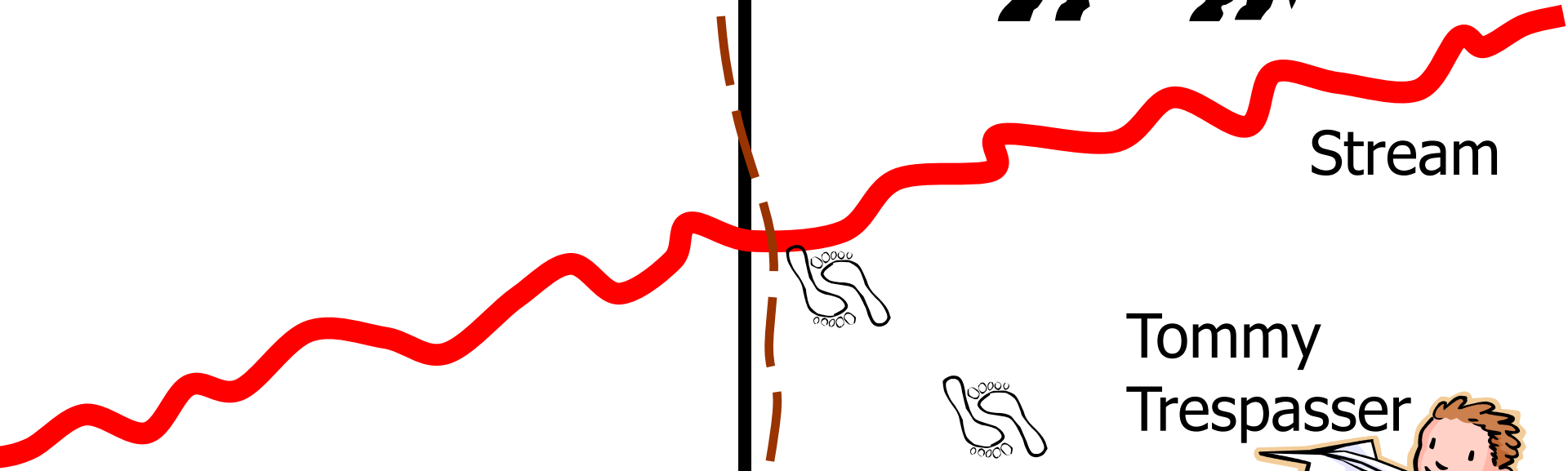
Derry Barnes



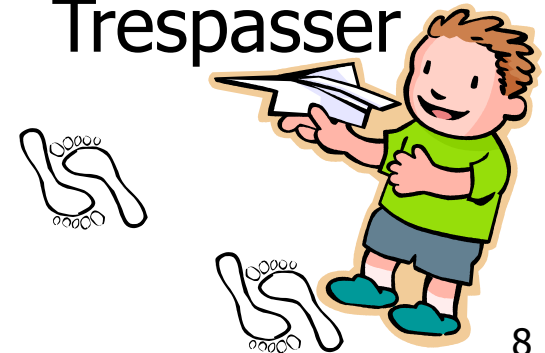
Angus McDuff



Stream



Tommy
Trespasser



11/5/2014

County Presentation



It happens

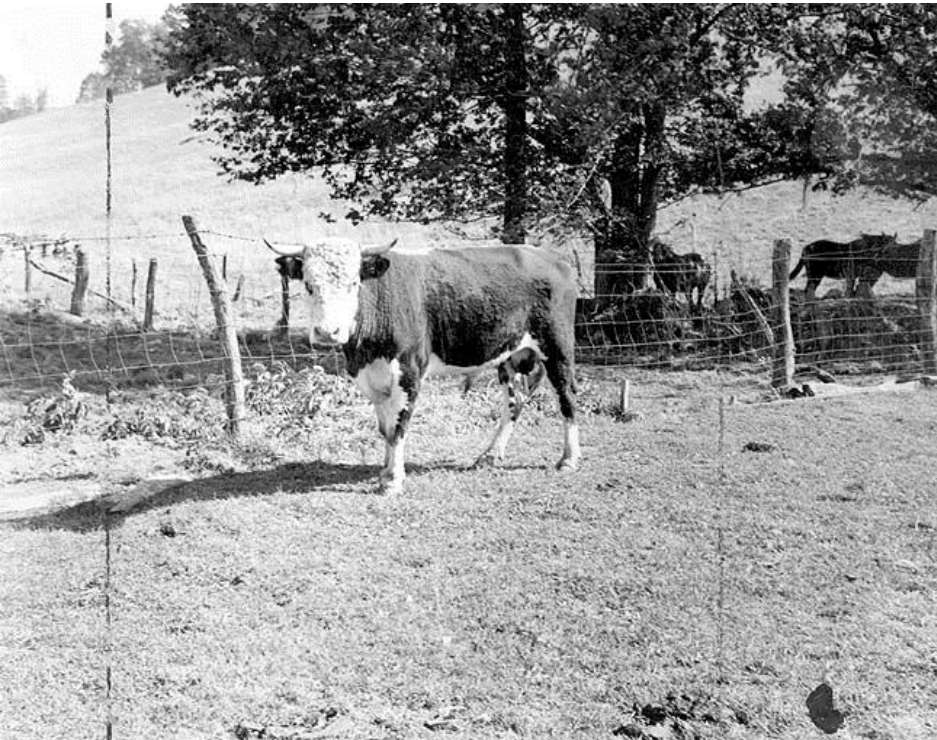
- Ames v. Brooks
- Caroline county---
 - Duty to fence
 - Bull retrieval
 - Dead farmer---self defense or.....



Fence-In ?



Fence-Out?





Common Law

- Duty to Fence In
- Open Range –
 - VA – Like “Wild” West
- No duty to Fence In unless building supervisors declare boundary lawful fence – then duty to fence IN



Fence Laws

- Fence In –
 - Source – English Common Law
 - Definition – Boundary lines have been declared to be lawful fences under § 55-310 of the Virginia Code. Landowners must fence their animals in.
- Fence Out –
 - Source – Virginia General Law
 - Definition – Landowner must construct lawful fences around their properties in order to keep wandering animals out.



Duty to Build

Fence In –

Source – English Common Law

Definition – Boundary lines have been declared to be lawful fences under §55-310 of the Virginia Code. Landowners must fence their animals in.

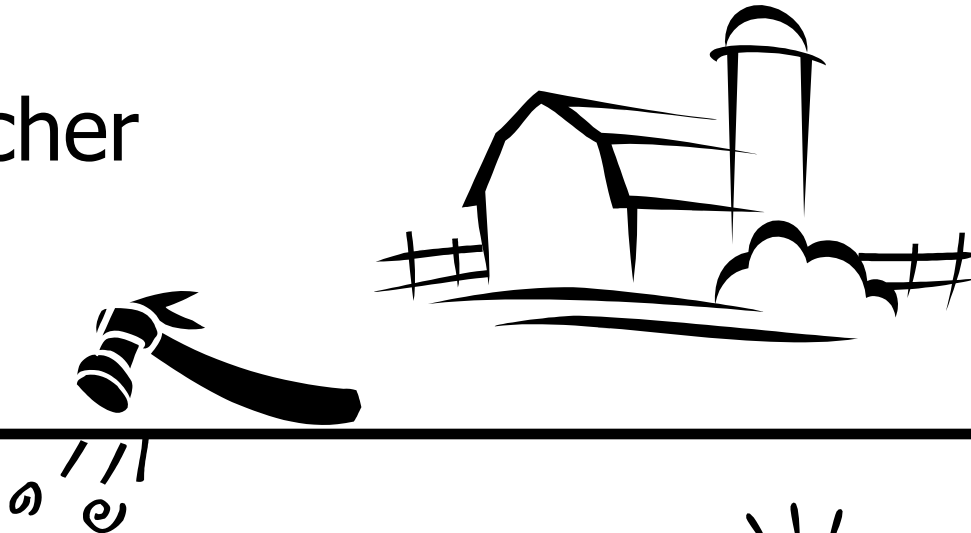
Fence Out –

Source – Virginia General Law

Definition – Landowners must construct lawful fences around their properties in order to keep wandering animals out. This is similar to open range law in some western states

Fence In Entitlement

Rancher



"No Fence"
Boundary
Lawful
Fence

Homeowner

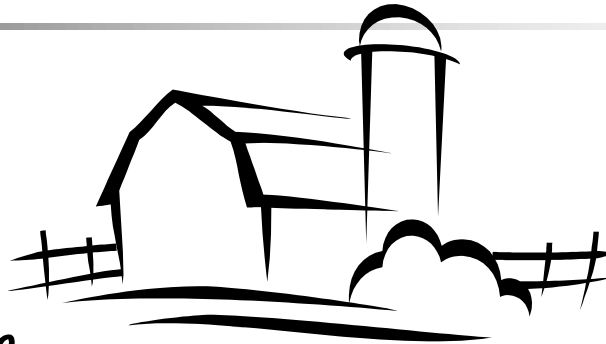


Common
Law
Modern



Fence Out Entitlement

Rancher



Wild
West

Division
Fence

Homeowner





Fence-Out Counties

- County has not declared boundary lines to be legal fences.
- A livestock owner has no duty to fence his animals in.
- Landowners have the duty to fence animals out.




Fence-In Counties

- County has declared boundary lines of every tract of land to be legal fences.
- Livestock owners have absolute duty to fence their animals in.
- Check with ***county attorney.***



B. Is My County Fence-In or Out?

Fence-In – counties/cities that **have**
“declared the boundary line of each lot
or tract of land, or any stream in such
county...or any selected portion of such
county to be a lawful fence.”



Fence-Out – counties/cities that have **not**
“declared the boundary line of each lot or
tract of land, or any stream in such
county/city...or any selected portion of
such county/city to be a lawful fence” are
shown by the color blue or light color on
the state map.



Fence-Out Counties

Accomack, Alleghany, Amelia, Amherst, Appomattox, Bath, Bland, Brunswick, Buchanan, Caroline, Carroll, Charles City, Chesapeake, Chesterfield, Craig, Culpeper, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Franklin, Frederick, Giles, Grayson, Greenville, Hampton, Henrico, Henry, Highland, Isle of Wight, James City, King William, Lancaster, Lee, Lunenburg, Madison, Matthews, Mecklenburg, Middlesex, Montgomery, Nelson, Newport News, Northumberland, Northampton, Nottoway, Powhatan, Prince Edward, Prince George, Prince William, Richmond, Rockbridge, **Russell**, Shenandoah, Suffolk, Surry, Tazewell, Sussex, Virginia Beach, Westmoreland, York



Fence-In Counties

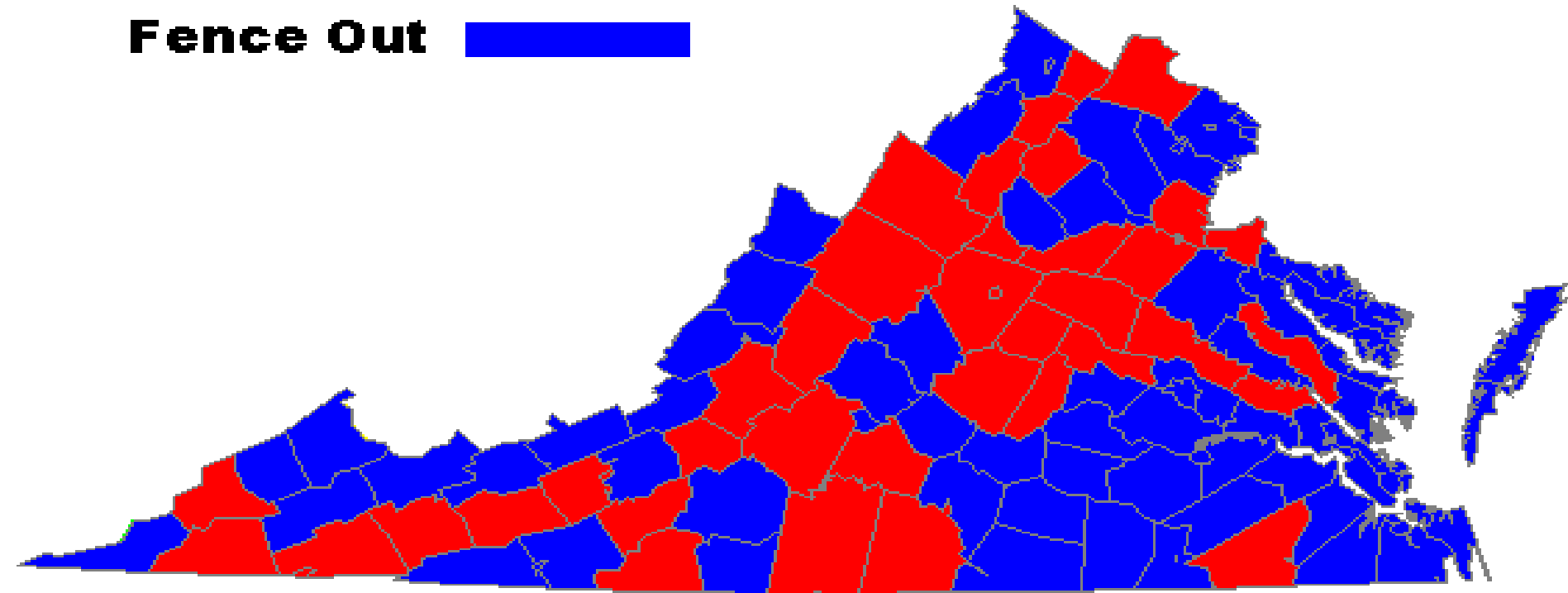
Albemarle, Augusta, Bedford, Botetourt,
Buckingham, Campbell, Clarke,
Cumberland, Floyd, Fluvanna, Gloucester,
Goochland, Greene, Halifax, Hanover, King
George, King and Queen, Loudon, Louisa,
New Kent, Orange, Page, Patrick,
Pittsylvania, Pulaski, Rappahannock,
Rockingham, Roanoke, Southampton,
Spotsylvania, **Smyth**, Warren,
Washington, Wise, Wythe

Fence In and Fence Out Counties

Fence In



Fence Out





Fence Definition

- Fences are often referred to as boundaries for the division of property.
- But, they are more properly treated in law as guards against intrusion, particularly for the purpose of preventing cattle or other domestic animals from going astray or for protecting a field or property.



Negligence

- Grandma Petunia choose to let her land lay open.
- Farmer Holly Stein chooses not to fence in his cattle in fence out county.
- Holly Steins' cattle destroy Petunias flowers and travel onto State Highway.
- Would Holly Stein be liable for injured and killed motorist?

What is a Legal Fence?





Lawful Fences Defined

- Law specifies certain types of fencing that qualify as lawful
- The intent is to provide for fences that livestock are not able to creep through.



Lawful Fences Defined—55-299

- Every fence shall be deemed a lawful fence as to any livestock named in § 55-306, which could not creep through the same, if

(1) Five feet high, including, if the fence be on a mound, the mound to the bottom of the ditch,

(2) Of barbed wire, 42 inches high, consisting of at least four strands of barbed wire, firmly fixed to posts, trees, or other supports substantially set in the ground, spaced no farther than 12 feet apart unless a substantial stay or brace is installed halfway between such posts, trees or other supports to which such wires shall be also fixed,



Lawful Fences Defined—55-299

- (3) Of boards, planks, or rails, 42 inches high, consisting of at least three boards firmly attached to posts, trees, or other supports substantially set in the ground,
- (4) Three feet high within the limits of any incorporated town whose charter does not prescribe, nor give to the council thereof power of prescribing, what shall constitute a lawful fence within such corporate limits, or



Lawful Fences Defined—55-299

(5) Any fence of any kind whatsoever, except as described in this section, and except in the case of incorporated towns as set forth in subdivision (4), which shall be:

a. At least 42 inches high,

b. Constructed from materials sold for fencing or consisting of systems or devices based on technology generally accepted as appropriate for the confinement or restriction of livestock named in § 55-306, and

c. Installed pursuant to generally acceptable standards so that applicable livestock named in § 55-306 cannot creep through the same.



Lawful Fences Defined—55-299

- The Board of Agriculture and Consumer Services may adopt rules and regulations regarding lawful fencing consistent with this section to provide greater specificity as to the requirements of lawful fencing.
- The absence of any such rule or regulation shall not affect the validity or applicability of this section as it relates to what constitutes lawful fencing.



Cattle guard and cities and towns

A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a lawful fence as to any livestock mentioned in [§ 55-306](#).

Nothing contained in this section shall affect the right of any such town to regulate or forbid the running at large of cattle and other domestic animals within its corporate limits.



Are Any of These Legal?



11/5/2014



County Presentation

Who Pays for the Fence?





Division Fences

- The obligation to provide a division fence typically occurs when:
 - The adjoining landowners do not have either a division fence built or an agreement on how to share the costs of a fence if it should be constructed.
 - A fence has already been built on the division line, and a question arises when the fence needs repair or replacement. Again, this scenario includes landowners that do not have a formal agreement.
 - The landowners have already come to an agreement, or the obligation has been transferred via title, on how the division fence between properties will be cared for and maintained.



Virginia Fence Statute Past Law

Virginia's division fence statute was so unique because few were allowed the option of letting one's land lie open. Only farmer could let land lie open.



Virginia Fence Statute

Past Law---Holly Hill

This particular exception was the point of controversy in the case discussed earlier that was argued before the Virginia Supreme Court.

- If you were a non-agricultural landowner, you were required to:
 - Come forward and pay for half of the new fence
 - Otherwise, you will become liable for that amount within 30 days
 - But, what expense?????



Duty to Build

- Option to lay open is to all but users of fence
- Harry, Harriet, Grandma, Northern States, Lowes
- Fence out...and lay open---issue of negligence????

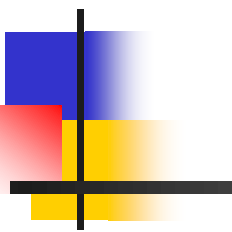


Division Fence Building

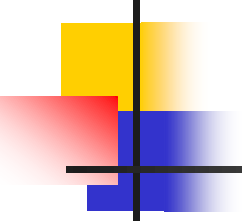
- In the case where no division fence has been built:
 - Either of the adjoining landowners may notify the other of his intent to build a fence.
 - The adjoining landowner must help build the fence or notify his neighbor within ten days of ***his intent to let his land lie open.***
 - ***If the adjoining landowner chooses to let his land lie open, then the builder of the fence must do so at his own expense.***

(New Law – After July 1, 2005)

§55-317 Obligation to provide division fences.



Adjoining landowners shall build and maintain, at their joint and equal expense, division fences between their lands, unless one of them shall choose to let his land lie open or unless they shall otherwise agree between themselves. Acts 1970, c. 713; Acts 1977, c. 624. Amended by Acts 2005, c. 873. Post July 1, 2005 Law.

- 
-
- An Landowner must pay half of the fence cost if an adjacent landowner notifies him of his intent to construct the fence ***AND THEY USE THE FENCE.***
 - ***Non user can opt out.***



Division Fence Building--Now

- If you receive notification from your neighbor of their intent to build a division fence, you have these options:
 - Come forward and pay for half of the fence
 - Notify builder, in writing, within 10 days of intent ***to let your land lie open***
 - After 30 days of non-response, you will become liable for half of all cost



Division Fence Repair

- If a fence that already exists is in need of repair, one of the landowners must give written notice to his neighbors detailing his plans for repairing the fence.
- The adjoining landowner must pay half of the repair costs. ***He has no provision for opting out.***



Division Fence Disrepair

- If a division fence falls into disrepair, and a neighbor notifies you of their intention to repair it:
 - You must come forward within 30 days and repair your section of the fence
 - If not, you will be liable for half the cost of repairs, regardless



New Fence Law I

House Bill NO. 1648

- § 55-317. Obligation to provide division fences.
 - Adjoining landowners shall build and maintain, at their joint and equal expense, division fences between their lands, unless one of them shall choose to let his land lie open as hereinafter provided for, or unless they shall otherwise agree between themselves.
-



New Fence Law II

Possible Removed

No adjoining landowner who owns or otherwise controls livestock as defined in § 55-306 may choose to let his land lie open unless he can show by a preponderance of the evidence that those livestock are restrained from trespass or otherwise running at large by means other than a division fence established pursuant to this article.

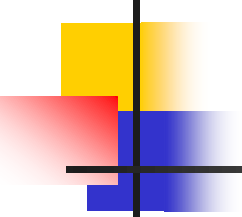
~~Proceedings for the erection and repair fences shall be as set forth in the following sections.~~



Duty to repair

- Current owners: Where a division fence **exists, the adjoining landowners share the responsibility for its repairs.**
- Must new owners of adjacent lands share expense of maintenance of division fences?
- Depends:
 - Did prior owners sign and file agreement to share duties.

C. Fence Already Built. –



If fence is built and used, then it must be jointly repaired.

If a division fence falls into disrepair, and a neighbor notifies you of their intention to repair it and you use the fence for cattle:

- You must come forward within 30 days and repair your section of the fence
- If not, you will be liable for half the cost of repairs.



Lawful Fence

1. Statutory Description
2. Standard for Construction of Fence
Out “Enclosure” for Trespass to Apply
3. Standard of Construction and Repair
of Division Line Fence

Horse or cow on neighbors land?



- Trespass.... Strict liability
- Pen the animal
- Damages



Trespassing

Virginia statutes have specific provisions allowing recovery for trespass by animals if they cross lawful fences within the state and cause damage by their trespass.

This particular legislation is designed to apply to horses, mules, cattle, hogs, sheep, or goats.

Should any of these animals enter into grounds that are enclosed by a lawful fence, the owner or manager of the animals is liable for the damages incurred by the owner of the property.



Damage Recovery



Now that liability for damages has been determined, it is important to ask how those damages can be recovered.

If, however, an ox was previously in the habit of goring, and its owner has been warned, yet he does not confine it, and kills a man or woman, the ox shall be stoned and its owner also shall be put to death. *Exodus 21:29 (New American Standard Translation)*



Act of God

Where fence began to fall almost immediately after it was constructed by defendants and it was doomed to failure even in absence of high wind on day of final collapse, defendants could not avoid liability for breach of contract on basis that collapse of fence had been caused by an Act of God.



Horse and cow on the road

- Negligence
 - How long has the cow been out
 - Windstorm & tree
 - Gate open
 - New horse jumps the fence



Electric Fence Checklist

- Fence charge regulated by controlling device approved by U.L., I.C.C.C., or § 55-298.2 of the Code of Virginia
- Controlling device does not permit uninterrupted current flow for longer than one second with value over 5 milliamperes device, is between 450 and 550 ohms
- Fence supplied by only one controlling device
- The controlling device is properly grounded.



Cattle Guard Allowed...easement holders expense

- A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a **lawful fence** as to any livestock mentioned in § 55-306.



Cattle Guards

When constructing fence, cattle guards may be installed and considered to be lawful fences if they are able to turn livestock. The use of cattle guards also involves various rights granted under Virginia's fencing statutes.



Line Fence?---Building on the line??

When I decide to build my division fence, should I build it on the boundary line? This question is one that is asked many times to agricultural lawyers throughout the country. Indeed, this issue is an interesting point to ponder



E. Fences in Town

It should be noted, however, that these provisions are applicable only in counties and not in cities and towns. It makes no difference if a defendant's fence meets the requirements set out above if the action takes place in a city or town. This section is considered to be inapplicable outside of a county, and bears no weight on liability or degree of care. (*See Perlin v. Chappell, 198 Va. 861, 96 S.E. 2d 805 (1957)*).

Local districts may also impose certain fence requirements under their zoning laws. This generally applies to town, city, or suburban landholdings.



Indiana solution

- Only users pay
- Users build and maintain right half...
- Liability based on where whose fence the animal went through

- 
-
- Questions and comments



Willing V. Booker, 160 Va. 461 (1933)

- Ownership of land carries with it right to division fence on common boundaries of adjoining lands.
- A fence is not a two dimension concept. It must have width. One may occupy the necessary land on each side of the true line for such a fence, though it encloses part of the adjoining tracts. One proprietor may place half of a fence of reasonable dimensions on the land of the adjoining owner.



Hash v. Commonwealth, 88 Va. 172 (1892)

- Where accused had built a fence upon the line between his land and that of deceased, and it had been so used for a number of years, and deceased had notified accused not to remove it, the removal thereof would be nothing more than a trespass.
- But if the fence had been built by the accused on his own land, such removal would not be a tortious act at all. And in either event, if, to prevent such removal, deceased had made an attack upon accused with a deadly weapon, under circumstances calculated to excite in the latter's mind a reasonable apprehension of death or great bodily injury to himself, under which he kills his assailant, he would be entitled to avail himself of the plea of self-defense



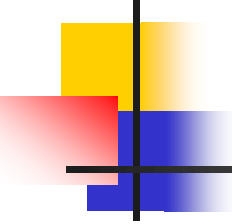
55-321. Requirements for agreement to bind successors in title; subsequent owners

- No agreement made between adjoining landowners, with respect to the construction or maintenance of the division fence between their lands, shall be binding on their successors in title, **unless** it be in writing and specifically so state, and be recorded in the deed book in the clerk's office of the county in which the land is located, and properly indexed as deeds are required by law to be indexed.



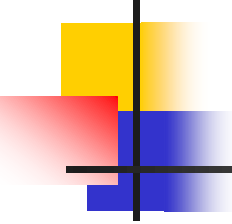
Hale v. Fawcett 214 VA 583 (1974)

- the court below ruled (1) that since there was no 'lawful' **division fence** on the line between the adjoining landowners, neither the plaintiff nor the defendant could recover for any damages done by livestock which came through, over or under the existing fence



Tate v. Ogg 170 Va. 95, 195 S.E. 496 (1938)

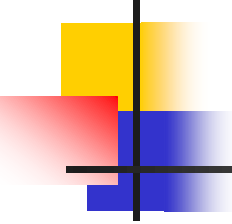
- The rule allowing person redress if exclusive and peaceful enjoyment of his own land shall be wrongfully interrupted applies to acts of trespass by domestic animals, unless some provision of law requires landowner to actually fence out such animals.



Tate v. Ogg 170 Va. 95, 195 S.E. 496 (1938)

- The common-law rule requiring owner of domestic "animals" at his own peril to keep them on his own land or within enclosures includes domestic turkeys and poultry, since word "animals" viewed in broad sense is used in contradistinction to a human being, and signifies an inferior living creature generally having the power of self-motion.

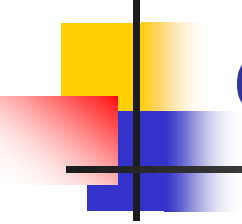
Under statute allowing recovery for trespass of any horse, mule, cattle, hog, sheep, or goat upon land of another enclosed by lawful fence, Legislature has not attempted to prevent domestic fowls from running at large, nor to require landowner to fence against fowls of another.



Tate v. Ogg 170 Va. 95, 195 S.E. 496 (1938)

- The Supreme Court of Appeals will take judicial cognizance of the fact that it is the nature of a turkey to chase a grasshopper or other bugs or insects without paying much attention to fences or boundary lines.
- The livestock ... are quadrupeds and animals, whose self-motion is confined to the ground. The word 'cattle' in common acceptation is a collective name for domestic quadrupeds, such as horses, mules and those which serve as food for man.

Iate v. Ogg 170 Va. 95, 195 S.E. 496 (1938)---Free range chicken



- The common law rule requiring the owner of domestic animals to keep them on his own land, with respect to fowl, is in force in Virginia
- One may not in Virginia raise a flock of turkeys for his own use, or for commercial purposes, and either willfully drive them, or carelessly permit them to go upon the lands of another, and there destroy the property of the other. But where the fowls on adjacent farms merely make infrequent visits to the property of the adjoining landowner, and the damages thereby are inconsequential, and the circumstances indicate that the fowls have escaped for only a few minutes from their pens or from the vigilance of their landowner, and there is no good reason to believe that the trespasses will continue in the future, relief by injunction will be denied.

Frequently Asked Questions



Question:

Farmer Jones's cow gets into Farmer Smith's corn field and causes substantial damage. Can Farmer Smith recover for the damage to his corn?



Answer:

The answer depends on the county in which the lands are located. (a) If the farms are located in counties that have the optional “no fence law” then the owner (Farmer Jones) is responsible for the damage since his cows crossed a boundary designated as a lawful fence. (b) In other counties, if the cow crosses “a lawful fence” to enter the corn field, Farmer Jones is responsible for the damages caused.




Question:

Farmer Jones would like to construct a fence between his property and that of Farmer Smith. Can he require Farmer Smith to help him pay for this fence?




Answer:

The answer depends on whether or not farmer Smith wishes to allow his land to lie open. Farmer Jones may notify Farmer Smith of his intention to construct a new fence. Farmer Smith may then notify Farmer Jones within ten days that he intends to let his own land lie open. If he chooses to do so, Farmer Jones must build the fence at his own expense. However, if Farmer Smith ever uses the fence in the future to help enclose livestock, then he would be liable for one-half the value of the fence at that time. If Farmer Smith makes no reply whatsoever, Farmer Jones may construct the fence after thirty days and hold Farmer Smith responsible for one-half the cost of construction.




Question: If a fence was constructed 20 or more years ago, are any of these laws applicable?

- Answer: Yes...replacement / repair


- 
- Question: Does the division fence legally place the property line at the fence line?
-

- Answer: It depends. The fence should be built on the property line or a letter stating that it is not on the property line filed. If the fence is built three feet away from the property line, the then other party would not have to share the cost.




Question: Suppose the fence was built years ago and nothing was said to the adjacent landowner, does this change anything?

■ Answer: No




Question: What if a tree falls on a fence from a golf club? Is the golf club responsible for the damage and removal of the trees?

- Answer: Yes, if they are negligent (i.e. they don't remove a dead tree).



■ Question: Suppose a fence is adjacent to a golf club. Is this different from a farm?

- Answer: Prior Law A farmer without cattle can choose to let his land lay open, but no other person is allowed to let their land lay open (i.e. An apple orchard did not have to pay, but mother tulip or Joe commercial had to pay). Holly Hill Farms case states this. Now Individuals can say the same.
- New Law – Yes golf course nee not pay



Question: If a tree from a farmer's property falls across the fence and does damage to another's property, am I responsible?

- Answer: Once again, it is a matter of negligence.



The End

Presentation Designed by:
Emily Blevins & Cathy Sponaugle