

A farmer owns a small farm with several head of cattle, which are kept in a fenced grazing area. One day the cattle were frightened by a thunderstorm, an occasional occurrence in the area. The cattle broke through the fence, entered onto a neighbor's property, and severely damaged the neighbor's crops. Under the law of the state, landowners are not required to erect fences to prevent the intrusion of livestock.

If the neighbor sues the farmer to recover for the damage done to his crops, will the neighbor prevail?

- A. No, because the thunderstorm was a force of nature.
- B. No, unless the fence was negligently maintained by the farmer.
- C. Yes, because the farmer's cattle caused the damage to the neighbor's crops.
- D. Yes, if the farmer's cattle had panicked during previous thunderstorms.

## Explanation:

### Imposition of strict liability

(liability imposed regardless of fault)

<b>Abnormally dangerous activities</b>	Uncommon activity in community that poses foreseeable & highly significant risk of physical harm Risk cannot be minimized by reasonable care <i>and</i> Physical harm caused by abnormal danger
<b>Intrusion by livestock</b>	Foreseeable intrusion of livestock onto land of another <i>and</i> Intrusion causes physical harm typical of livestock (eg, consumption of grass)
<b>Wild animals</b>	Category of typically undomesticated animal likely to cause personal injury unless restrained (eg, poisonous snake) <i>and</i> Physical harm caused by animal's abnormal danger
<b>Abnormally dangerous animals</b>	Animal with dangerous tendencies other animals in that category typically lack (eg, rabid dog) Owner/possessor knows or should know of danger <i>and</i> Physical harm results from that danger
<b>Strict products liability</b>	Harm caused by commercial supplier's defective product <i>and</i> Defect existed when product left commercial supplier's control

**Strict liability** (liability without proof of fault) is imposed when **livestock** or other animals (not dogs or cats) **enter another's land** and cause bodily harm or **property damage** typical of livestock (eg, consumption of grass). But since the cause of the intrusion must be **foreseeable**, strict liability is not imposed when the intrusion is caused by an unforeseeable event or force—eg, stranger opens cattle gate, unpredictable tornado destroys fence.

Here, the farmer's cattle broke through his fence because they were frightened by a thunderstorm—an occasional (and therefore foreseeable) occurrence in the area. And since the cattle intruded onto the neighbor's land and damaged his crops, the farmer is strictly liable for that damage.

**(Choice A)** Because the thunderstorm was a *foreseeable* force of nature, it does not relieve the farmer of strict liability.

**(Choice B)** Although the farmer kept his cattle in a fenced area, he had no duty to erect a fence to prevent the cattle from escaping under state law. And since strict liability is imposed without proof of fault, the farmer's negligent maintenance of the fence is irrelevant.

**(Choice D)** While the intervening event that caused the intrusion must have been foreseeable to impose strict liability, the *effect* of that event need not have been. Therefore,

the farmer would be strictly liable even if his cattle had never panicked during a previous thunderstorm.

**Educational objective:**

A defendant is strictly liable when his/her livestock foreseeably enter onto another's land and cause physical harm (ie, bodily harm or property damage) typical of livestock. However, a defendant is not strictly liable for a livestock intrusion caused by an unforeseeable act or force—eg, an unprecedented earthquake.

**References**

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 21 (Am. Law Inst. 2010) (strict liability for livestock intrusion).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 34 reporter's note to cmt. d (Am. Law Inst. 2010) (foreseeable force of nature does not negate strict liability).

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