

N.C.P.I.-Civil. 812.02

ANIMALS - COMMON LAW LIABILITY OF OWNER WHOSE DOMESTIC LIVESTOCK RUN AT LARGE WITH OWNER'S KNOWLEDGE AND CONSENT.
GENERAL CIVIL VOLUME
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N.C. Gen. Stat. § 68-16

812.02 ANIMALS - COMMON LAW LIABILITY OF OWNER WHOSE DOMESTIC LIVESTOCK¹ RUN AT LARGE WITH OWNER'S KNOWLEDGE AND CONSENT. N.C. Gen. Stat. § 68-16.²

The (*state number*) issue reads:

"Was the plaintiff [injured] [damaged] by the defendant's allowing *his* (*describe livestock animal*) to run at large with *his* knowledge and consent?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, three things:

First, that the defendant [owned] [kept] the (*describe livestock animal*).

Second, that, with the defendant's knowledge and consent, the (*describe livestock animal*) ran at large.³ An animal is at large when wandering, roving, or rambling at will, without restraint, or without being under control of an owner or keeper.⁴ A person consents to an animal running at large when *he* does not take reasonably prompt action to restrain its freedom. (The mere fact that an animal is found running at large is not sufficient by itself to establish that its [owner] [keeper] had knowledge of and consented to its running at large.⁵ However, if an animal is repeatedly found running at large, the knowledge and consent of the [owner] [keeper] may be inferred.⁶)

Third, that, the defendant, by allowing the (*describe livestock animal*) to run at large with the defendant's knowledge and consent, proximately caused [injury] [damage] to the plaintiff.⁷ Proximate cause is a cause which in a natural and continuous sequence produces a

person's [injury] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [damage] or some similar injurious result. There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's conduct was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's conduct was a proximate cause.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant allowed *his* (*describe livestock animal*) to run at large with *his* knowledge and consent and in that way proximately caused [injury] [damage] to the plaintiff, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. N.C. Gen. Stat. § 68-15 (1993) provides that "[t]he word 'livestock' in this Chapter shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats and swine." "Certain animals *ferae naturae* may be domesticated to such an extent as to be classified, in respect of liability of the owner for injuries they commit, with tame or domestic animals." *Swain v. Tillett*, 269 N.C. 46, 51, 152 S.E.2d 297, 301 (1967) (quoting 4 Am. Jur.2d *Animals* § 83 (1962)).

2. N.C. Gen. Stat. § 68-16 (1993) provides that "[i]f any person shall allow his livestock to run at large, he shall be guilty of a Class 3 misdemeanor."

3. A private cause of action was suggested in *Gardner v. Black*, 217 N.C. 573, 576, 9 S.E.2d 10, 12 (1940), and was confirmed in *Kelly v. Willis*, 238 N.C. 637, 639, 78 S.E.2d 711, 712 (1953). See also *McCoy v. Tillman*, 224 N.C. 201, 206, 29 S.E.2d 683, 686 (1944). While case law provides for liability based on knowledge and consent, it also states that the negligent failure to restrain livestock is also actionable. *Kelly*, 238 N.C. at 639, 78 S.E.2d at 712-713; *Gardner*, 217 N.C. at 576, 9 S.E.2d at 12; *Sutton v. Duke*, 7 N.C. App. 100, 103, 171 S.E.2d 343, 345 (1969), *aff'd*, 277 N.C. 94, 176 S.E.2d 161 (1970). In negligence cases, the standard negligence instructions may be used. See N.C.P.I.-Civil

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102.10 *et seq.*

4. 3A C.J.S. *Animals* § 157 (1973).

5. *Gardner*, 217 N.C. at 576-77, 9 S.E.2d at 12.

6. *Kelly*, 238 N.C. at 639-40, 178 S.E.2d at 713.

7. *Id.*, 238 N.C. at 640, 178 S.E.2d at 713.