

1 **Committee commentary.** — New Mexico appellate courts have pointed out that the doctrine of
2 res ipsa loquitor does not always apply merely because an accident involving livestock occurs on
3 a highway. *Akin v. Berkshire*, 1973-NMCA-106, ¶ 8, 85 N.M. 425, 512 P.2d 1261 [~~Ct. App.~~
4 ~~1973~~].

5 The mere fact that an animal is on the highway, of itself, is not evidence of negligence. *Mitchell v.*
6 *Ridgway*, 1966-NMSC-265, 77 N.M. 249, 421 P.2d 778 [~~1966~~]; *Steed v. Roundy*, 342 F.2d 159,
7 161 (10th Cir. 1965); *Hyrum Smith [Estate] Est. Co. v. Peterson*, 227 F.2d 442, 444 (10th Cir.
8 1955); *Poole v. Gillison*, 15 F.R.D. 194, 197 (E.D. Ark. 1953).

9 The word [~~"negligently"~~] "negligently" was added to Subsection B of NMSA 1978, Section 66-7-
10 363 [~~NMSA 1978~~] by the 1965 [~~legislature~~] Legislature. In other words, the owner or keeper of
11 livestock who did not [~~"permit" his~~] "permit" livestock to wander or graze on the highway was not
12 liable, but now there is need for a further element of proof and a finding to support a judgment.

13 In 1966, the [~~legislature~~] Legislature overruled the court-enunciated principle of law from the case
14 of *Grubb v. Wolfe*, 1965-NMSC-153, ¶¶ 10, 14, 75 N.M. 601, 408 P.2d 756, [~~1965~~] with the
15 enactment of Subsection C of NMSA 1978, Section 66-7-363 [~~NMSA 1978~~] (1975). This
16 provision, of course, applies only in unfenced rangeland.

17 Other livestock cases which should be reviewed and analyzed in preparing jury instructions in this
18 area are: *Dean v. Biesecker*, 1975-NMSC-021, 87 N.M. 389, 534 P.2d 481 [~~1975~~]; *Carrillo v.*
19 *Hoyl*, 1973-NMCA-149, 85 N.M. 751, 517 P.2d 73 [~~Ct. App. 1973~~]; *Tapia v. McKenzie*, 1973-
20 NMCA-126, 85 N.M. 567, 514 P.2d 618 [~~Ct. App. 1973~~]; *Lebow v. McIntyre*, 1968-NMCA-103,
21 79 N.M. 753, 449 P.2d 661 [~~Ct. App. 1968~~]; *Carrasco v. Calley*, 1968-NMCA-061, 79 N.M.
22 432, 444 P.2d 617 [~~Ct. App. 1968~~]; *Knox v. Trujillo*, 1963-NMSC-132, 72 N.M. 345, 383 P.2d
23 823 [~~1963~~].

- 1 Reference should also be made to NMSA 1978, Sections 30-8-13 (1963) and 30-8-14 (1975)
- 2 [~~NMSA 1978~~].
- 3 This instruction was numbered UJI Civ. 5.2 in the first edition.
- 4 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]
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