THE COASE THEOREM AND CALIFORNIA ANIMAL TRESPASS LAW

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I. Introduction

The modern study of law and economics is often the study of transaction costs.[1] Sometimes the inquiry is normative, and the question is which assignment of rights will minimize transaction costs and thus promote overall social welfare. Sometimes the inquiry is positive and asks what effect different rights assignments have had on the behavior of the parties whose conduct the law governed. In his pathbreaking paper "The Problem of Social Cost,"[2] Ronald Coase used the classic conflict between the rancher and the farmer to illustrate the central role that these transaction costs played. In this paper I return to this problem not only from a normative—analytical—but also from a positive—historical—point of view.

Until 1960, when Coase published "The Problem of Social Cost," causation was a fairly settled issue for lawyers and economists interested in

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[1] The term "transaction costs" is used here in the broadest possible sense as any technical market failure or public good that would prevent the attainment of an internal social optimum. Often transaction costs are defined to be only those costs that increase the costs of negotiating or enforcing a contract. For a thorough development of the concept of transaction costs, see Oliver E. Williamson, Markets and Hierarchies: Analysis and Antitrust Implications (1975).

[2] Ronald Coase, The Problem of Social Cost, 3 J. Law & Econ. 1 (1960). For an extensive list of the literature that has analyzed the Coase theorem, see Elizabeth Hoffman & Matthew L. Spitzer, The Coase Theorem: Some Experimental Tests, 25 J. Law & Econ. 73 (1982).

[*Journal of Legal Studies*, vol. XVI (January 1987)]
 0047-2530/87/1601-0009$01.50