

### **Fact Pattern – The City of Chicago v. Catherine O’Leary (and her Cow)**

Chicago’s summer and fall of 1871 were unusually dry, and the city’s many wooden buildings had dried out. Small fires had dotted the city throughout those months as sparks from kitchen flames and nighttime lanterns found their way to dry grass and vulnerable buildings, most of which only had a single layer of fireproof material covering the wooden frames. Chicago’s fire department, chronically underfunded and understaffed, with only 185 firefighters to serve the entire city, was straining to keep up. The fire department chief’s many requests for better equipment and more men had all been denied. On October 7th, a fire broke out that, despite the fire department’s quick response, destroyed four city blocks and burned for most of the night. By the morning of October 8<sup>th</sup> the city’s firefighters were exhausted and disheartened.

Catherine and Patrick O’Leary lived almost 10 blocks South of where the October 7th fire burned. They managed to escape damage to their property that night, but had not been able to sleep because of the noise from the firefighters and citizens who were desperately trying to quell the flames. Mrs. O’Leary went about her day on October 8th in a lethargic daze. Normally sharp as a tack, Mrs. O’Leary found herself struggling to keep track of her tasks for the day and sort out what she had and had not already done. However, the one thing she knew she could not forget was her beloved cow. Throughout the day Mrs. O’Leary went to her barn six times, just to make sure she hadn’t forgotten to feed the cow and clean its stall. The wooden barn provided much-needed shade for the cow, but was also a bit dark, so Mrs. O’Leary always kept a lantern hung by door that she would re-light each time she came and went. After her final trip to the barn around 8 PM, Mrs. O’Leary climbed into bed to catch up on sleep she missed the night before. As she closed her eyes, she fell asleep to the sound of fiddle music and shadows of flickering lanterns from a party next door.

Barely an hour after Mrs. O’Leary closed her eyes she was awoken by the sound of bells—an alert that the fire department was responding to an emergency. Mr. O’Leary, panicked, was also yelling about a fire in their barn. A watchman stationed at the nearby courthouse tower had spotted flames and sent a message to the fire department that they should come to Canalport and Halstead. A few minutes later the watchman realized he had given the wrong location: the fire was actually in a barn at the nearby DeKoven and Jefferson Streets: This was the O’Leary’s barn where their cow lived. The watchman attempted to change his report, but the telegraph dispatcher refused, fearing it would cause confusion. While the watchman argued with the dispatcher, a storekeeper nearby who had also noticed the flames pulled the hook on one of the city’s new fire-alarm boxes. Unfortunately, the city had not kept methodical records about which fire-alarm boxes had been cleared for use and which had not, resulting in some boxes never being inspected at all. This particular box had not been inspected and did not work.

The fire department finally arrived just before 10 PM—nearly an hour after the first report of flames was dispatched. By this point the fire had already spread rapidly and the seven fire companies that had shown up were too late to control it. A reporter for the Chicago Evening Post later wrote that “the land was thickly studded with one-story frame dwellings, cow stables, pig sties, corncribs, sheds innumerable; every wretched building within four feet of its neighbor, and everything of wood.” The cramped, dry, conditions violated Chicago’s building code, but no one from the city paid much attention to this part of town and it had developed into a slum-like farm area as a result. When the fire began there were also strong winds coming from the Southwest, which fanned flames from the O’Leary’s barn high into the sky and spit burning debris and ash in all directions. In this perfect storm of circumstances, the fire rapidly spread northeast.

By 11:30 PM the fire had managed to cross the southern branch of the Chicago River, and had even ignited the waste and oil floating on the water’s surface. By midnight, entering the morning of October 9th, Chicago’s gasworks exploded. No firefighters had been sent there to protect the gasworks,

despite its importance to city infrastructure and the risk of major explosion. The explosion fueled the fire further and left most of the city without lights. With only light from the still-growing flames, Chicagoans were fleeing toward Lake Michigan, trying to escape the flames. The supposedly fire-proof courthouse began burning close to 2 AM and authorities released the prisoners held there, who joined the fleeing masses. Shortly after 2 AM the fire leapt across the river's main branch and continued burning northward. By 3 AM the Waterworks' wooden roof caught fire and destroyed the pumps below, contaminating Chicago's main source of drinking water and cutting off the fire department's primary water source. After many more hours, as the flames continued to spread, General Philip H. Sheridan ordered his troops to blow up the remaining buildings in the path of the fire along Michigan Avenue, attempting to ensure that the thousands of people huddled along the lake's edge would not be forced into the lake itself. Despite his efforts, the fire continued spreading North, reaching Lincoln Park and above. As night fell, nearly 24 hours after the fire began, it fire slowly extinguished itself, helped along by the stretches of unbuilt lots it had finally reached, the lake, and longed-for rainfall.

All in all, the fire that began in Mrs. O'Leary's barn burned nearly three and half square miles. It destroyed approximately 17,450 buildings and 73 miles of street, causing about 200 million dollars in damage. About one third of Chicago was ruined. Nearly 100,000 people were left homeless—one in three Chicago residents—and there were 120 confirmed deaths. The estimated death toll was closer to 300.

Because the fire began in Mrs. O'Leary's barn, investigators quickly approached her and her neighbors with questions. One neighbor told investigators about Mrs. O'Leary's love for her cow, and how they always noticed the light from Mrs. O'Leary's lantern as she tended to her cow each evening. The neighbor, who hated the smell of Mrs. O'Leary's cow, suggested to the investigators that perhaps the cow had knocked over the lantern into the O'Leary's pile of coal and hay that they had recently stockpiled for winter. Another neighbor, Mrs. White, who had been at the party next door, said she saw someone wander out of the party and into the O'Learys' barn shortly before the fire began and wondered if that person could have been the cause. Various people thought the mystery person may have been Peg Leg Sullivan, but Mr. Sullivan insisted he only entered the barn after the fire began in an attempt to save the cows trapped inside, though he could not provide another witness to corroborate his story.

When investigators questioned Mrs. O'Leary about all the neighbors' theories, she admitted she did not know which, if any, were true. However, she adamantly denied that her cow would have kicked over a lantern. Mrs. O'Leary insisted that she always blew out the lantern when leaving the barn, and that she had been in bed when the fire started so the lantern would not have been lit at that time. However, when pressed further, Mrs. O'Leary admitted that her memory from that night was foggy because she was so tired, and she could not remember with 100 percent certainty whether she blew out the lantern on that occasion. However, Mrs. O'Leary still made certain that the investigators knew that blowing out the lantern was her routine, so she felt confident that she would have blown it out. Mrs. O'Leary also made sure to point out that the neighbors had many lanterns lit that night as well for their party.

The official report filed after the investigation simply stated, "whether it originated from a spark blown from a chimney on that windy night, or was set on fire by human agency—whether accidental or intentional—we are unable to determine."

Applicable IL Law as of 1871: the owner of a domestic animal (including most livestock) is not liable for injury to person or property done by the animal "unless it can be shown that he previously had notice of the animal's mischievous propensity, or that the injury was attributable to some other neglect on his part; it being in general necessary in an action for an injury committed by such animals, to allege and prove the scienter." *Stumps v. Kelley*, 22 Ill. 140, 163-64 (1859).