▶ LEAD

Can't You Smell That Smell?: Handling Nuisance Cases in Kansas

By Edward L. Robinson

***Edward L. Robinson** is a member of Joseph, Hollander & Craft LLC and chairs the firm's Civil Litigation Department. He represents plaintiffs and defendants in real estate, environmental, construction, business, consumer protection and fraud disputes. Mr. Robinson graduated magna cum laude from Wichita State University and with honors from the Washburn University School of Law, where he served on the Board of Editors of the Washburn Law Journal and obtained a Certificate in Natural Resources Law. He serves as the Chair of the KsAJ Board of Editors. Mr. Robinson is also a member of the Wichita and Kansas Bar Associations and the American Association for Justice.*

Introduction

Anyone with neighbors has experienced what may feel like a nuisance, at least from a lay perspective. Foul or noxious odors, loud noises, dust, debris, runoff, and any manner of other disturbances can interfere with one's right to enjoy property.

There is a line, sometimes tough to draw, between mere annoyance and full-blown nuisance. The former is a part of life, while the latter is a compensable cause of action. And whether something is a nuisance sometimes depends on who you ask. when I first traveled to western Kansas as a child and experienced the distinct aroma of a feedlot, I asked my uncle (a rancher), "What is that smell?" He took a deep breath, looked over at me with a grin and said, "That's the smell of money."

Kansas has its fair share of farming, oil production, industry and municipalities, so the law of nuisance in our state is well-developed. Throughout the years the legislature and courts have tried to strike a balance between businesses and neighbors, as well as cities and citizens. In doing so, the traditional lines separating annoyance and nuisance have been redrawn. In the past legislative session, lawmakers got out their erasers and pencils again and re-drew some of the lines in favor of agricultural interests. So long as these lines can be erased and re-drawn, the contours of nuisance will continue to change.

This article is intended to give practitioners the basic tools to evaluate nuisance cases in Kansas, help understand the sometimes confusing line between annoyance and nuisance and identify the compensable damages in such cases.

The Basics of Nuisance

As a cause of action, nuisance is unique. Unlike other claims such as negligence, breach of contract or trespass, nuisance is a field of tort liability rather than a type of tortious conduct.[1] In other words, nuisance is the *result* of conduct, whether that conduct is intentional, negligent or subject to strict liability.

Nuisance as a cause of action can seem simple one moment and confusing the next. The basic jury instruction for nuisance states:

> A person is liable in damages for the creation or maintenance of anything that unreasonably interferes with the rights of another, whether in person, or property, and thereby causes *(him) (her)* harm, inconvenience, or damage. *(A thing such as that just mentioned is sometimes called a nuisance.)*[2]

While this jury instruction makes nuisance seem straightforward, the Kansas Court of Appeals has noted:

> What may or may not constitute a nuisance in a particular case

> depends upon many things, such as the type of neighborhood, the nature of the thing or wrong complained of, its proximity to those alleging injury or damage, its frequency, continuity or duration, and the damage or annoyance resulting. Each case of necessity must depend upon the particular facts and circumstances.[3]

The harder one looks at the cause of action for nuisance, the more confusing it can seem. This is because the basic jury instruction paints only a fraction of the picture.[4] There are numerous exceptions and limitations, and even some of the exceptions have exceptions.

Therefore, to evaluate and handle a claim for nuisance, the practitioner needs to appreciate the distinctions between temporary and continuing nuisance; public and private nuisance; agricultural and non-agricultural private nuisance; and nuisance arising from intentional conduct, negligence and strict liability. The potential combinations can be dizzying, so a methodical approach is essential.

Temporary and Continuing Nuisances (and the Statute of Limitations)

The general statute of limitations for nuisance claims is two years from the date of accrual.[5]

The date of accrual depends on whether the nuisance is temporary or continuing. A temporary nuisance arises when the nuisance-causing condition is abatable.[6] An example is periodic flooding.[7] In these cases, a new cause of action arises each time damage occurs.[8]

By contrast, a continuing (or permanent) nuisance arises when the nuisance-causing condition is not abatable. An example is a sewage treatment plant.[9] In these cases, the cause of action accrues when the nuisance-causing condition first arises.[10]

Determining whether a nuisance is temporary or permanent is not always easy.[11] For example, a drainage ditch may be a permanent structure that is causing temporary flooding. Is this a temporary or permanent nuisance? Kansas courts have landed on both sides of this argument.[12] Practitioners should act with caution if calculating the statute of limitations using a continuing nuisance theory.

Public and Private Nuisance

Kansas law distinguishes between public and private nuisances and reflects the historical development of nuisance law in our state.

Public Nuisance

The law of nuisance in Kansas began with public nuisance and developing cities in the mid-1800s. In *City of Leavenworth v. Casey*,[13] a tavern owner sued the City of Leavenworth in 1858 for building a runoff culvert that could not handle heavy rains and diverted rainwater into his cellar, destroying groceries and other goods.[14] In affirming a jury verdict for the tavern owner, the Kansas Supreme Court laid down the law of the land[15] (at least for that moment). The Court held that a form of strict liability applied to the city's obligations.[16] It also held that municipalities had continuing duties to maintain their drainage systems.[17]

The ruling in *Casey* began a tug-of-war between municipalities and citizens. The next round occurred 12 years later in *City of Atchison v. Challis*.[18] Reviewing facts and a jury verdict nearly identical to *Casey*, the Court bluntly rejected its previous holding, declaring the proposition in *Casey* "never was the law," and held that cities were subject to a negligence standard and were free to abandon drainage systems with virtually no recourse.[19]

This tug of war foreshadowed how the law of nuisance would develop in Kansas for the next 150 years. The current jury instruction for public nuisance states:

> A municipality is liable for injuries resulting from its creation or maintenance of a nuisance.
> The term nuisance means something which unreasonably interferes with the right of a person, whether in person, property or enjoyment of property or comfort, and something which is an annoyance, that which annoys or causes trouble or vexation, that which is offensive or noxious, or something that works harm, inconvenience, or damage.

This jury instruction again paints only part of the picture. Any public nuisance must also pass through the Kansas Tort Claims Act.[20] The KTCA does not state whether claims of nuisance are subject the statute. It generally provides:

> Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state.[21]

But the limitations of the KTCA are numerous.[22] Kansas courts have provided little illumination in how the KTCA applies to public nuisance claims. The claims of intentional nuisance or trespass that made it to appeal had lacked proof necessary to survive summary judgment on that basis.[23] And the claims of negligent nuisance have been similarly decided.[24] As a result, it is not clear how the KTCA applies to claims of public nuisance.

Private Nuisance

A private nuisance is a tort related to an unlawful interference with a person's use or enjoyment of his land. The concept of a private nuisance does not exist apart from the interest of a landowner.[25] Kansas has erected strong barriers to nuisance claims against farmers, ranchers and other agricultural pursuits, so the first question in a private nuisance claim is whether the nuisance is from an agricultural source.

Agricultural Private Nuisance

In 1982, Kansas enacted statutes to immunize certain agricultural activities from nuisance liability.[26] The statutes state, in part:

> Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance, public or private, unless the activity has a substantial adverse effect on the public health and safety. If such agricultural activity is undertaken in conformity with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

This statute protected farms and other agricultural activity from urban sprawl and gave potential defendants a presumptive shield if they could show they were complying with applicable laws and regulations.

The Kansas legislature took these protections one step further in 2013, allowing farmland owners to expand the scope of their agricultural activity, including but not limited to acreage, number of animals, and also allowing them to change or temporarily cease their agricultural activities without losing the statutory protections.[27] Creating a protection for changed agricultural activities was likely a belated response to a 1993 decision from the Kansas Court of Appeals holding the statutory protections did not apply to a change in use of agricultural land.[28]

What constitutes agricultural use has been the subject of much litigation, and is a fact-intensive analysis.[29]

Non-Agricultural Private Nuisance

If the case involves private nuisance without agricultural elements, there are no special rules or exceptions. The case must be evaluated and handled based on the type of nuisance (temporary or continuing) and whether the nuisance arises from conduct that is intentional, negligent or subject to strict liability.

Intent, Negligence, and Strict Liability

Kansas courts hold that "Liability for nuisance may rest upon (1) an intentional invasion of the plaintiff's interests, or (2) a negligent one, or (3) conduct which is abnormal and out of place in its surroundings, and so falls fairly within the principle of strict liability."[30]

Intentional Nuisance

An intentional nuisance is when a defendant acts "with the purpose of causing the nuisance, or know that it is resulting or substantially certain to result from his or her conduct."[31] In other words, the defendant must specifically intend to damage the plaintiff or act in such a way to make it "substantially certain" damage will occur.[32]

The Kansas Court of Appeals illuminated the concept of intentional nuisance with the following discussion:

> By far the greater number of such nuisances are intentional. Occasionally they proceed from a malicious desire to do harm for its own sake; but more often they are intentional merely in the sense that the defendant has created or continued the condition causing the nuisance with full knowledge that the harm to the plaintiff's interests is substantially certain to follow. Thus a defendant who continues to spray chemicals into the air after he is notified that they are blown onto the plaintiff's land is to be regarded as intending that result, and the same is true when he knows that he is contaminating the plaintiff's water supply with his slag refuse, or that blown sand from the land he is improving is ruining the paint on the plaintiff's house. If there is no reasonable justification for such conduct, it is tortious and subjects him to liability.[33]

Comparative fault is not a defense to an intentional nuisance claim.[34] Pleading nuisance as only an intentional act will likely mean the defendant's insurer (to the extent there is one) will deny coverage and not provide a defense to the action.[35]

Negligent Nuisance

The next level of nuisance arises from negligent conduct. In these cases, the claims for negligence and nuisance may seem intertwined, as the Kansas Court of Appeals observed: "A nuisance may or may not be based on the negligent act of the one creating it. However, it frequently is the consequence of negligence, or the same acts or omissions which constitute negligence may give rise to a nuisance."[36]

The Court illuminated the concept of negligent nuisance with this discussion:

> But a nuisance may also result from conduct which is merely negligent, where there is no intent to interfere in any way with the plaintiff, but merely a failure to take precautions against a risk apparent to a reasonable man. The defendant may, for example, carry on some entirely proper activity, such as burying dead animals, firing his furnace, or constructing a water main in the street, without reasonable care against the stench or smoke or flow of water which may follow. In particular, negligence is the usual basis of liability where the defendant is doing something authorized by the legislature, or, without knowledge that anything is wrong, he has merely failed to inspect and repair his premises, or he has only failed to discover or to repair or abate a condition which he has not created, but which is under his control.[37]

Comparative fault is a defense to a negligent nuisance action.[38]

Strict Liability Nuisance

Finally, a nuisance claim may arise from conduct that is subject to strict liability. In Kansas, all strict liability claims in tort are governed by the abnormally dangerous activity test from the Second Restatement of Torts.[39] Section 519 states:

> (1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm.
> (2) This strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous.

The factors considered in determining whether an activity is abnormally dangerous are:

- A high degree of risk of some harm to the person, land or chattels of others;
- A likelihood that the harm that results from it will be great;
- An inability to eliminate the risk by the exercise of reasonable care;
- The extent to which the activity is not a matter of common usage;
- The inappropriateness of the activity to the place where it is carried on; and
- The extent to which its value to the community is outweighed by its dangerous attributes.[40]

Examples of abnormally dangerous activities that have given rise to strict-liability nuisance actions include:

- The release of crude oil into floodwaters of the Verdigris River[41];
- Subsurface soil contamination from an oil refinery[42];
- Escaping natural gas that lead to explosions[43];
- Release of hexavalent chromium into the Ogallala aquifer[44].

Damages and Remedies

Nuisance is a consequence of conduct that may be intentional, negligent or subject to strict liability. This begs the question: how does a nuisance action benefit clients any more than bringing an underlying action for intentional conduct, negligence or strict liability? In short, there are additional types of damages available for nuisance that may not otherwise be recoverable, and certain types of nuisance can be enjoined.

Equitable Relief

The law distinguishes between nuisances that can be the subject of injunctive relief, or "nuisances *per se,*" and nuisances that are remediable only through damages, or "nuisances *per accidens*."[45] A nuisance *per se* is "an act, instrument, or structure in which is a nuisance at all times and under any circumstances."[46] These can be the subject of injunctive relief.[47] The standard for such relief is not mere diminution in property value; the plaintiff must show that "the injury resulting from the nuisance is or will be irreparable."[48] Examples of such nuisances include:

- Noise, if of a character as to be of actual physical discomfort to persons of ordinary sensibilities[49];
- Dirt-track racing at a county fair[50];
- Operation of a funeral home and morgue in a residential neighborhood[51];
- Operating a rock crushing company next to a residence, destroying furniture, clothing and food[52];
- Operating a creamery in a residential neighborhood and causing significant noise, fumes and vibrations[53];
- Negligent operation of a sewer plant[54].

Injunctions are typically granted only to existing nuisances, but threatened or anticipated nuisances may also warrant injunctive relief.[55]

In contrast, a nuisance *per accidens*, or nuisance in fact, "is an act, instrument, or a structure which becomes a nuisance by reason of surrounding circumstances."[56] Kansas courts have generally referred to this type of nuisance only to distinguish between nuisances *per se*.

Damages

Nuisance damages fall into two main categories: strictly economic, based largely on property value, and more ethereal, based on loss of use, inconvenience and discomfort.

Damages for Property Value

A fundamental part of nuisance damages is the effect on the plaintiff's property value. The first inquiry in this analysis is whether the nuisance is temporary or continuing/permanent. The Kansas Supreme Court has noted that "In judging whether damages are temporary or permanent, three factors are analyzed: (1) the nature of the causative structure, (2) the nature of the damages, and (3) the ability to determine or estimate damages."[57]

If the nuisance is permanent, damages "are measured by the depreciation in the market value of the property injured, taking into consideration, however, that recovery is not limited solely to the damages to the property, but that special damages arising from annoyance, discomfort, or inconvenience to the person may also be recovered."[58] If an injury is permanent in character, all the damages, whether past, present, or prospective, must be recovered in a single action.[59]

> In contrast, if the nuisance is temporary the damages are more limited. In such cases: Temporary damages limit recovery for injury that is intermittent and occasional and when the cause of the injury is remediable, removable or abatable. Damages are awarded on the theory that the cause of the injury may and will be terminated. Temporary damages are defined as damages to real estate which are recoverable from time to time as they occur from injury.[60]

The damages are not limited to one action, but the law "leav[es] the door open for further suits if further damage occurs."[61]

Special Damages

Kansas law also allows the recovery of so-called "special" damages, for annoyance, discomfort or inconvenience to the person.[62] These are inherently more difficult to calculate, but are nevertheless recoverable as a component of nuisance.

Other Matters

Kansas courts have limited nuisance actions to persons whose property is directly affected by the alleged nuisance. In Kansas, property owners cannot claim damages "for a diminution in the property's market value caused by the stigma or market fear resulting from an accidental contamination where the property owner has not proved either a physical injury to the property or an interference with the owner's use and enjoyment of the property."[63]

Nuisance actions can sometimes arise in the context of the workplace. Kansas courts have held that damages for nuisance are unavailable if the action would be properly characterized as a workers compensation claim.[64]

Analogous Statutory Claims

Kansas also has a discrete statute that imposes liability on persons who release or discharge materials detrimental to the quality of waters or soil.[65] K.S.A. 65-6203, which is tucked in the middle of statutes relating to emergency and long-term-care services, requires responsible parties to pay actual damages caused by a release, discharge or corrective action.[66] This statute has been construed to create a strict-liability standard without the requirement of any abnormally dangerous activity.[67] Unlike nuisance, the statute of limitations is three years.[68]

Conclusion

The law of nuisance in Kansas is well-developed and complicated but can give practitioners unique ways to ensure their clients are adequately compensated. Anyone considering such an action must be diligent in properly classifying the type of case and avoiding any statute of limitations problems. ▲

Endnotes

1 *Culwell v. Abbott Constr. Co.*, 211 Kan. 359, 506 P.2d 1191 (1973).
2 PIK—Civil 4th, § 103.06 (emphasis in original).
3 *Sandifer Motors, Inc. v. City of Roeland Park*, 6 Kan. App. 2d 308, Syl.¶ 4, 628 P.2d 239 (1981).
4 For example, it is implied that the interference must also be substantial. *Id.* at 312.
5 K.S.A. 60-513(a)(4); *Winkel v. Miller*, 288 Kan. 455, 205 P.3d 688 (2009) (affirming district court's application of two-year statute of limitations to dismiss nuisance claim); *Isnard v. City of Coffeyville*, 260 Kan. 2, 6, 917 P.2d 882 (1996); *Finlay v. Finlay*, 18 Kan. App. 2d 479, 856 P.2d 183 (1993) (applying two-year statute of limitations to intentional nuisance claim); *Eastman v. Coffeyville Res. Ref. & Mktg., LLC*, 295 Kan. 470, 479, 284 P.3d 1049 (2012) (discussing strict liability).
6 *Bowen v. City of Kansas City*, 231 Kan. 450, 454, 646 P.2d 484 (1982).
7 *Id.*
8 *Id.*
9 *Jeakins v. City of El Dorado*, 143 Kan. 206, 53 P.2d 798 (1936).
10 *Id.* at 210 (citing *McDaniel v. City of Cherryvale*, 91 Kan. 40, 136 P. 899 (1913) and noting that "a cause of action for permanent damages arose when the sewage was first placed in the stream"); *see also Spacek v. City of Topeka*, 189 Kan. 645, 647, 371 P.2d 165 (1962).
11 *Winkel v. Miller*, 288 Kan. 455, 467, 205 P.3d 688 (2009).
12 *Compare Dougan v. Rossville Drainage Dist.*, 270 Kan. 468, 477, 15 P.3d 338 (2000) (holding that drainage ditch was a permanent structure but resulting flooding a temporary nuisance), *with Isnard v. City of Coffeyville*, 260 Kan. 2, 11, 917 P.2d 882 (1996) (holding that storm sewer was permanent nuisance from which future damages due to flooding could be reasonably determined).
13 McCahon 124 (1860). This appears to be the first published nuisance action in Kansas.
14 *Id.* at 126-27.
15 The Court was prescient in anticipating more such cases. It noted: "[I]ncorporated cities and towns are springing forth and multiplying within our territory so rapidly, and litigation is becoming so rife, in relation to the powers, rights, privileges, obligations and duties thereof, that we deemed it proper, as the court of the highest authority in the territory, to embrace this, the earliest opportunity, to declare the law, as we understand it, so far as we consistently could, with reference to the case at bar; and, by so doing, that we might best subserve the public interest." *Id.* at 133-34.
16 *Id.*, Syl. ¶ 7.
17 *Id.*, Syl. ¶ 10.
18 9 Kan. 603 (1872).
19 *Id.* at 610-614.
20 K.S.A. 75-6101 *et seq.*
21 *Id.* 75-6103(a).
22 *Id.* 75-6104 (listing 24 non-exclusive exceptions to liability).
23 *Williamson v. City of Hays*, 275 Kan. 300, 311-12, 64 P.3d 364 (2003) (rejecting claim of intentional trespass for lack of factual basis and declining to address whether KTCA shielded city from liability); *Lofland v. Sedgwick County*, 26 Kan. App. 2d 697, 996 P.2d 334 (1999) (same holding in claim of intentional nuisance).
24 *See, e.g.*, *Lofland*, 26 Kan. App. 2d at 705-06 ("On appeal, the Lofland group contend the immunity provision of the KTCA does not apply to their claims of nuisance and trespass. The Lofland group's claims of nuisance and trespass clearly fail on the merits, and no other claims have been identified or argued on appeal. There is no need to further determine the applicability of the KTCA.").
25 *Sandifer Motors, Inc. v. City of Roeland Park*, 6 Kan. App. 2d 308, Syl.¶24, 628 P.2d 239 (1981).
26 K.S.A. 2-3201 *et seq.*
27 SB 168 (2013).
28 *Finlay v. Finlay*, 18 Kan. App. 2d 479, 856 P.2d 183 (1993).
29 For a good summary of the cases involving agricultural use, *see Weber v. Bd. of County Comm'rs of Franklin County*, 20 Kan. App. 2d 152; 884 P.2d 1159 (1994).
30 *Sandifer Motors, Inc.*, 6 Kan. App. 2d 308, Syl.¶ 6.
31 PIK – Civil 4th § 127.90 (2008); *United Proteins, Inc. v. Farmland Indus., Inc.*, 259 Kan. 725, 732, 915 P.2d 80 (1996); *Sandifer Motors, Inc.*, 6 Kan. App. 2d at 317 (quoting Restatement (Second) of Torts § 825, p. 117)).
32 *Sandifer Motors, Inc.*, 6 Kan. App. 2d at 318; *see also Williams v. Amoco Prod. Co.*, 241

Kan. 102, 117-18, 734 P.2d 1113 (1987) (discussing the elements of a claim of private nuisance and the requirement of intent).

33 *Sandifer Motors, Inc.*, 6 Kan. App. 2d at 315-316 (quoting Prosser, Law of Torts § 87, pp. 574-75 (4th ed. 1971)).

34 *Id.* at Syl. ¶9.

35 *E.g.*, *Spivey v. Safeco Ins. Co.*, 254 Kan. 237; 865 P.2d 182 (1993).

36 *Sandifer Motors, Inc.*, 6 Kan. App. 2d 308, Syl.¶ 5.

37 *Id.* at 316 (quoting Prosser, Law of Torts § 87, pp. 574-75 (4th ed. 1971)).

38 *Id.* at Syl. ¶7.

39 Restatement (Second) of Torts §§ 519 and 520 (1976); *City of Neodesha v. BP Corp. N. Am., Inc.*, 295 Kan. 298, 287 P.3d 214 (2012).

40 The *Williams* court also adopted Section 520 of the Restatement, which lists factors to be considered in determining whether an activity is abnormally dangerous. 241 Kan. at 114.

41 *Eastman v. Coffeyville Res. Ref. & Mktg. LLC*, 295 Kan. 470, 284 P.3d 1049 (2012).

42 *City of Neodesha*, 295 Kan. 298.

43 *Smith v. Kan. Gas Serv. Co.*, 285 Kan. 33, 169 P.3d 1052 (2007).

44 *United Proteins, Inc. v. Farmland Indus., Inc.*, 259 Kan. 725, 732, 915 P.2d 80 (1996).

45 Vickridge First and Second Addition Homowners Ass'n, Inc. v. Catholic Diocese of Wichita, 212 Kan. 348, 355, 510 P.2d 1296 (1973).

46 *Id.*

47 *Id.* at 344 (noting that "A court of equity may interfere by injunction to prevent a threatened injury where a proposed structure will be a nuisance per se, but a mere prospect, possibility or threat of future annoyance or injury from a structure or instrumentality which is not a nuisance per se, is not ground for an injunction and equity will not interfere where the apprehended injury or annoyance is doubtful, uncertain, speculative or contingent.").

48 *Id.* at 360.

49 *Id.* at 361 (citing 58 Am. Jur. 2d *Nuisances* § 64 (1973)).

50 *Buckmaster v. Bourbon Co. Fair Ass'n*, 174 Kan. 515, 519, 256 P.2d 878 (1953). The Kansas Supreme Court was asked to review the trial court's decision not to dismiss the action. Id. The plaintiff had alleged "that the race track and approaches are so dirty that the homes and buildings of plaintiffs and many others are made unbearable, unclean, dirty and were damaged; there is an allegation dirt and dust came in clouds to, against and into the homes and covered the floors, carpets, rugs, furniture, bedding, inside walls, drapes and pictures, making the homes almost unbearable, making ten times as much cleaning as before the using of the race track and the homes and property of plaintiffs were reduced in value by the acts of the defendants; that the peace and quiet of plaintiffs' homes had been destroyed and the value of their property reduced one-fourth to one-half in value; that parking cars on plaintiffs' property destroyed the free use of it; that noises, loud talking and yelling and using microphones day and night and racing old cars and conducting carnivals and maintaining lights made it impossible for plaintiffs to get any real rest.". *Id.*

51 *Leland v. Turner*, 117 Kan. 294, 230 P. 1061 (1924).

52 *King v. Am. Rock Crusher*, 119 Kan. 618, 240 P. 394 (1925).

53 *Alster v. Allen*, 141 Kan. 661, 42 P. 2d 969 (1935).

54 *Jeakins v. City of El Dorado*, 143 Kan. 206, 53 P. 2d 798 (1936).

55 *Id.* at 354.

56 *Vickridge*, at 355 (citing *Dill v. Excel Packing Co.*, 183 Kan. 513, 331 P. 2d 539 (1958).

57 *Dougan v. Rossville Drainage Dist.*, 270 Kan. 468, 15 P.3d 338 (2000).

58 *Adams v. City of Arkansas City*, 188 Kan. 391, 399, 362 P.2d 829 (1961).

59 *Isnard v. City of Coffeyville*, 260 Kan. 2, 7, 917 P.2d 882 (1996).

60 *Gowing v. McCandless*, 219 Kan. 140, 145, 547 P.2d 338 (1976).

61 *Adams*, 188 Kan. at 399.

62 *Adams v. City of Arkansas City*, 188 Kan. 391, 399, 362 P.2d 829 (1961).

63 *Smith*, 285 Kan. at 43.

64 *Anderson v. Beardmore*, 210 Kan. 343, 345, 502 P.2d 799 (1972) (following *Wilburn v. Boeing Airplane Co.*, 188 Kan. 722, 729, 366 P.2d 246 (1961)).

65 K.S.A. 65-6203

66 K.S.A. 65-6203(a).

67 *Eastman*, 295 Kan. 470

68 *Id.* at 480.