

# Hardwicke

# Equine Law Newsletter

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The members of Hardwicke's Equine Law Team have specialised skills and experience in all aspects of horse-related legal services, including insurance claims arising from injuries caused by or to horses, contractual disputes involving horses, liability under the Animals Act 1971, regulatory issues, veterinary negligence, and employment and construction disputes with an equine flavour. We represent both claimants and defendant insurers via conventional means in addition to direct access.

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Welcome to the inaugural edition of our Equine Law Newsletter. We hope those of you who ride have been out enjoying the spring weather! In this edition, we introduce our equine law practitioners at Hardwicke, note some current developments in equine topics, and feature the first of a four-part series of articles by Jasmine Murphy on horse liability.

If you have any comments or suggestions for future editions, please contact the Marketing Manager Louise Poppelwell on 0207 242 2523 or [louise.poppelwell@hardwicke.co.uk](mailto:louise.poppelwell@hardwicke.co.uk)

**Our Team**

- **John Gallagher** was called in 1974 and has expertise in professional negligence, personal injury and commercial contract disputes. He has acted for a number of high profile professional sportsmen, and has served as a professional member of the Sports Resolution Panel. He also has a special interest in firearms.
- **Barbara Hewson** was called in 1985. She was brought up in Ireland, and still enjoys an occasional outing with the *Galway Blazers*. She is a member of both Irish Bars, and currently rides with the *Bar Riding Group*, aka the *Pegasus Club*. At present she is acting in a claim about the death of a valuable dressage horse during admission to a veterinary hospital. She also has experience of judicial review, regulatory defence work and inquests.
- **Colm Nugent** was called in 1992, and worked for Glaxo Smithkline for five years, before joining Hardwicke. His main areas of work are commercial disputes, personal injury, professional negligence (primarily acting for claimants) and employers' liability. He is known for his fast turnaround of paperwork and dry sense of humour.
- **Jasmine Murphy** was called in 2002 and specialises in personal injury and professional negligence. As a teenager, she broke in ponies with a view to an eventing career. Unfortunately, many of her protégés were not big enough to see over a pair of double uprights, let alone jump them, so instead she funded her legal studies by buying, breaking and selling ponies. These days, her equine experience is useful when acting for both claimants and defendants in cases involving horse related injuries and the Animals Act 1971.
- **Alex Bodnar** was called in 2004 and practises in insurance and commercial law. She is a keen and experienced horse rider. Alex owned her own horse as a teenager and now rides weekly with the *Pegasus Club*. She has an interest in equine-related contractual and insurance matters, and has particular experience of coverage and avoidance issues in relation to insurance policies. She recently advised the purchaser of a horse in relation to a potential Sale of Goods Act claim against the vendor. Alex is happy to advise or to act for insurers, underwriters, owners, trainers, jockeys, competitors and professional bodies.

## News Round-Up: what was and is to come?

The new micro-chipping regulations in relation to horses came into force in August last year: *Horse Passport Regulations 2009*, implementing Regulation (EC) No 504/2008. DEFRA's *Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids* was issued at the end of 2009. Objections to DEFRA's proposed horse tax continue to rumble on. We await the General Election with keen interest, and wonder if it may result in changes to the law on hunting.

## Spotlight: Animal Hoarding

Animal hoarding is a particularly distressing and challenging phenomenon for veterinarians, and animal welfare organisations. The perpetrators typically acquire large numbers of animals and then fail to care for them properly, causing immense suffering. Nowadays, animal hoarding is viewed as a psychological condition, which may be linked to mental disorders such as Obsessive Compulsive Disorder (OCD). Perpetrators with mental conditions like OCD may be incapable of appreciating how their behaviour is harming the animals concerned. Prosecutions can be difficult, and may prove ineffective without other interventions.

Other owners may have had an exemplary track record of caring for animals, but are overcome by dementia, depression, or delusional disorders. Most frequently, cases of animal hoarding and neglect came to public attention through RSPCA prosecutions, such as the *Gray case* involving equine cruelty last year. The Crown Court will rule on Gray's appeal against his conviction on 11 counts under the Animal Welfare Act 2006 on 6 May.

Here is a link to a website with useful information on this troubling topic:

<http://www.tufts.edu/vet/cfa/hoarding/>

## Special Feature Article

### My (Not So) Nice Little Pony – Part One

In the first of a four-part series, Jasmine Murphy considers the current state of the law when horses cause injury to pedestrians and spectators

#### Introduction

In times when taking ecstasy is said to be about as harmful to your health as horse riding<sup>1</sup>, it is not surprising that those in the equine world should be concerned about legal liability in the event of personal injury caused by their horse to others. Such liability could arise in a variety of situations:

- allowing someone else to ride your horse
- spectators at a show or event
- hacking along the road
- walkers using public footpaths through fields containing horses

If an accident does happen, many owners are unaware that strict liability may be imposed upon them by the Animals Act 1971, in addition to any potential negligence claim that may arise. Since *Mirvahedy v Henley and another*<sup>2</sup> was heard in 2003, most insurers and lawyers were concerned that the scales had been tipped too far in favour of claimants injured by animals. Fortunately, the Animals Act 1971 is tortuously worded and difficult to interpret. In the seven years that have passed it seems the courts have been quite reluctant to penalise horse owners for normal equine behaviour to quite the degree feared after *Mirvahedy*.

In order to succeed in a claim under the Animals Act 1971, a claimant has to prove each stage of the three stage test (sub-sections (a), (b) and (c)) set out in section 2(2) which governs non-dangerous animals (into which category domestic horses fall).

Sub-sections (a) and (b) have alternate limbs, either of which can be satisfied. The court will consider each sub-section in turn in order to satisfy itself whether the claimant has made out his case on one or the other limbs of each part.

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<sup>1</sup> Professor David Nutt, former Chair of the Home Office's Advisory Council on the Misuse of Drugs, hit the headlines early in 2009 when reported in the Daily Telegraph as saying that "there was not much difference between horse riding and ecstasy". Coining the phrase "equasy" (short for Equine Addiction Syndrome) Professor Nutt said the addiction to horse riding could be blamed for 10 deaths and 100 road traffic accidents a year.

<sup>2</sup>[2003] UKHL16

Section 2(2) reads:

*Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if—*

- (a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and*
- (b) the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and*
- (c) those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of sixteen.*

In each case, the damage and the relevant characteristic of the horse have to be identified. In order for strict liability to arise the court should follow the above statutory test by considering:

- (1) whether the damage is caused by a dangerous characteristic (dangerous because of the likelihood that that type of damage will be caused or, if caused, its likely severity); and
- (2) whether that characteristic deviates from the normal characteristics of horses or the characteristic is normal only at particular times or in particular circumstances and the damage was in fact caused at such a time or in such circumstances; and
- (3) whether the keeper knew of that characteristic.

When deciding whether the particular animal's characteristics are normal or abnormal the court will consider this in comparison to the characteristics of the variety or breed of animal in question<sup>3</sup>. Is the characteristic normal or abnormal for, say, Shetland ponies as opposed to horses in general? This is usually more relevant in dog cases when considering the propensity of breeds such as German Shepherd dogs or Pitbull types to bite. However it may be relevant when considering a horse's temperament or natural ability to jump for example<sup>4</sup>.

<sup>3</sup> *Cummings v Grainger* [1977] 1QB 397, *Gloster v Chief Constable of Greater Manchester Police* [2000] CA, *Curtis v Betts* [1989] CA

<sup>4</sup> In *McKenny and another v Foster T/A Foster Partnership* [2008] EWCA Civ 173 the breed of the particular cow, a Limousin cow, was considered when deciding whether the cow had acted abnormally or not in jumping a cattle grid.

Liability will be imposed on the keeper of an animal, not necessarily just the owner. Section 6(3)(a) defines a keeper as one who owns an animal or “has it in his possession” or who is “head of a household of which a member under the age of sixteen owns the animal or has it in its possession”. Therefore, liability under the Animals Act could be imposed on those who, for example, have a horse on loan, those who are exercising a horse for another<sup>5</sup>, those who are lunging or loose schooling a horse for another<sup>6</sup> or livery yard owners.

The Act sets out various statutory defences in Section 5. A keeper can escape liability if the injury results solely from the fault of the person suffering it or if the injured person is a trespasser on premises. Likewise, voluntary acceptance of the risk of injury is a defence. However section 6(5) provides that if a person is employed and the risk of injury is incidental to that employment then he will not be treated as having accepted the risk voluntarily.

Of course, in addition to the strict liability rules under the Animals Act 1971, an injured person may have a claim in negligence or under the Occupiers' Liability Acts. However, the Animals Act provides a strict liability solution for claimants unable to show lack of reasonable care.

In this first article I will consider the situation of those who are injured by a horse incidentally, for example, those walking through fields containing horses or spectators watching horses. The second article in this series will consider the liability of horse owners when a rider is thrown from their horse. The third article will consider road traffic accidents when a horse, either ridden or loose, comes into collision with a vehicle. The fourth article will consider miscellaneous situations such as the duty in negligence that a riding instructor owes to students by riding instructors as well as the future for horse law.

## Liability for Injuries caused to Walkers and Others

People seem to be drawn to the pastoral sight of horses grazing in fields. One of the favourite subjects of the 18<sup>th</sup> century painter *Stubbs* was a group of horses, usually mares and foals, standing together in a typical English landscape.

Often public footpaths cross fields where horses are turned out. If a field adjoins a road, people may stop to stroke or feed horses over the gate.

<sup>5</sup> In *Flack v Hudson* [2000] CA it was held that the rider of a horse that bolted was a keeper although she had only been regularly exercising the horse for the owner for about two months.

<sup>6</sup> In *Dennett v Wain* [2004] Preston County Court Deputy Circuit Judge Townend it was held that the defendant was a keeper of a horse she was loose schooling in a ménage even though the owner was present.

There is ample scope for injury to arise, either as a result of a bite or a kick. In the majority of cases such injuries are minor and do not give rise to court action. However, there are reported cases where claimants have suffered more serious injuries and have sought compensation from the horse owner.

The first sub-section of the test in s.2(2) often leads to difficulties for claimants injured by a horse loose in a field. To hurdle this first test the claimant must be able to satisfy either limb of s.2(2)(a). Therefore the initial question is, was the loose horse likely to cause personal injury OR if caused, was such injury likely to be severe?

In a reported decision of HHJ Yelton at Southend County Court in 2005<sup>7</sup>, the claimant fell at this first hurdle in his claim brought under the Animals Act (the additional claim in negligence was abandoned at trial). The claimant was walking his young Bull Mastiff dog along a public footpath which crossed the defendant's field near Romford, Essex. The defendant grazed several horses in that field. The claimant alleged that he was charged by a "white stallion" which head butted him in the back as he was running away from it, propelling him into a ditch, containing barbed wire, at the edge of the field.

The defendant admitted he owned two large middle aged grey geldings (Hogan and The Brigand) which were in that field. However, he produced witness statements from various local people who gave evidence that they walked their dogs in that field for many years without any interest from, or interference by, the horses. A vet provided a witness statement commenting on the nature of the two horses.

An expert, Mr J Mackie, was jointly instructed to provide a report about equine behaviour. Mr Mackie said that it was ordinary equine behaviour for a horse to nuzzle or nudge a person with its head as a sign of affection but that this was unlikely to cause severe injury. It was also normal for horses to follow a person, but the described behaviour of attacking a person by chasing and head butting would be very unusual.

HHJ Yelton concluded that the behaviour of the horse was simply inquisitive and not likely to cause severe injury. Therefore the claimant did not fulfil either limb of the test in section 2(2)(a) and his claim was dismissed.

This situation was considered recently in Llangefni County Court in **Millward v (1) Pritchard (2) Lewis**<sup>8</sup>. Mr Millward was walking on a public footpath through

Mr Lewis's field where there was a group of six or seven horses ranging from yearlings to three year olds, owned by Mr Pritchard. Mr Millward said that the horses were milling around him and then one of the horses kicked him on the arm. He called evidence from a local woman who regularly used the footpath and who said that a year before she and her son and dog had been followed by the horses which were kicking out at each other and they had to take cover in a hedge. However, she had never made a complaint to any person about this incident. The claimant also instructed an expert a Mr J A R Mantell. The claim was brought under the Animals Act against Mr Pritchard as keeper and in negligence and nuisance against both defendants.

District Judge Smart found that the first limb of section 2(2)(a) was not made out. The expert did not support the conclusion that, unless restrained, horses were likely to cause damage and the evidence did not support it either. However, the evidence supported that a kick would be likely to cause severe damage. Therefore Mr Millward satisfied s.2(2)(a) on the basis that the second limb was made out.

Mr Millward relied on the second limb of the test in s.2(2)(b) that the characteristic of kicking out was normally found when horses were milling around. However, the District Judge found on Mr Millward's own evidence that the horses were stationary, that they were not milling around and that there were no particular circumstances that could explain the kick. The injury was likely to be severe because horses are large heavy animals, a normal characteristic of all horses found at all times. Therefore Mr Millward failed to succeed under s.2(2)(b). Even if he had succeeded on s.2(2)(b), DJ Smart said that he would have failed under s.2(2)(c) as there had been no previous complaint of this behaviour to Mr Pritchard. Likewise, in the absence of any previous complaints the allegations of negligence and nuisance failed.

Because the case fell at the second hurdle, Mr Millward's case on s.2(2)(c) was seemingly dismissed quite quickly by the District Judge. It is possible that if Mr Millward had overcome the first two sub-sections, he would have gone on to succeed under s.2(2)(c). This is because he had put his case on the basis that, as an experienced horse owner, Mr Pritchard could be fixed with knowledge that groups of horses milling around were likely to kick out. Mr Pritchard admitted in evidence that young horses will buck and kick as part of play. In **Mirvahedy** it was held that s.2(2)(c) was satisfied because the experienced horse owners knew of the general characteristic of horses to bolt when terrified. On the basis of the reasoning in **Mirvahedy**, it is suggested that Mr Millward could, therefore, have succeeded in overcoming the hurdle in s.2(2)(c) without recourse to previous complaints.

<sup>7</sup> **Fry v Morgan** [2005] Current Law September 2006

<sup>8</sup> [2007] Reported on Lawtel

In one such recent case<sup>9</sup>, the claimant was trampled by a herd of cows and calves and liability under the Animals Act 1971 was made out. The cows were likely to cause severe damage by their actions, their aggressive trampling was normal where cows had calves at foot and the defendant, a farmer, knew of this characteristic. If a group of young boisterous colts or a group of mares with foals known to be aggressive towards walkers and/or dogs were turned out in a field crossed by a public footpath, it may be the case that the keeper would be liable if injury ensued. Of course, much would depend on the expert evidence in such a case.

If a horse gets loose, whether at a show, event or even in the yard, people that get in the way of the horse can be injured. In the recent case of ***Glaister v Appleby-in-Westmorland Town Council***<sup>10</sup> the claimant was kicked in the head by a horse that had got loose at the annual Appleby Horse Fair. This was a case which was unsuccessfully brought against the Town Council for failing to have appropriate public liability insurance in place to cover such an accident.

In another County Court decision, ***Dennett v Wain***<sup>11</sup>, the by-stander claimant was helping her granddaughter groom her pony next to an indoor ménage. The claimant was injured when a horse, Laddie, jumped out of the ménage while being loose schooled. The experts in that case were Mr Hindle (claimant) and Mrs Goldsmith (defendant). The court's finding was that the claimant satisfied s.2(2)(a) because a large loose horse that had escaped from the ménage was likely to cause damage and s.2(2)(b) because in jumping out of the ménage Laddie was behaving abnormally. However, the claimant failed to prove s.2(2)(c) because there was no evidence that the defendant (not the owner but the woman who was loose schooling Laddie) knew of this characteristic. Further, because jumping out of a ménage was so unusual, the judge found that he could not accept that the defendant should have had that possibility in her mind.

It is foreseeable that liability could be found against a keeper under the Animals Act 1971 if a person was knocked down by a horse that was bolting because it had been frightened or terrified.

Of course, in certain situations, a walker injured by horses in a field could succeed at trial. For example, cases involving a herd of cows with calves, which are known to act aggressively towards potential threats, may be resolved in favour of the claimant.

Such a case would be likely to follow the reasoning in ***Mirvahedy*** where the facts were similar, except that the bolting horses can into contact with a car.

In summary, the following principles can be drawn from these decisions:

- It is unlikely that the first limb of s.2(2)(a) will be satisfied in the case of horses loose in a field which lack special features;
- Kicking or biting may be considered sufficient to satisfy the second limb of s.2(2)(a) but other equine behaviour may not;
- The behaviour of the horse has to be precisely described in the pleadings and supported by the evidence to establish the “certain times/circumstances” requirement of the second limb of s.2(2)(b)
- Expert evidence is likely to be essential, particularly when relying on a “certain times/circumstances” argument
- Evidence of previous complaints about similar behaviour is likely to impute an owner with knowledge so as to satisfy s.2(2)(c) – this is likely to be more relevant if the claimant is relying on the first limb of s.2(2)(b);
- On the other hand, without such actual knowledge, the claimant will have to make his case (relying on expert evidence and evidence of the defendant) on the fact that the characteristic in question would be known to any horse owner;
- In the light of ***Mirvahedy*** a person who gets in the way of a bolting horse and is subsequently injured is more likely to succeed in a claim under the Animals Act 1971.

In the next article I will consider the situation of horse riding accidents and when a keeper could be liable for injuries sustained by a rider thrown from a horse.

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<sup>9</sup>***McKaskie v Cameron*** [2009] Preston County Court HHJ Howarth delivering a 221 page judgment

<sup>10</sup> [2009] EWCA Civ 1325

<sup>11</sup> [2004] reported on Lawtel