

Darlington & Stockton Times
September 2007

Liability and the Animals Act

What is the difference between hitting an escaped cow standing in the middle of a road and hitting a bolting horse that had also escaped? As the law stands, there is a great deal indeed.

It is likely that there is no claim for injury caused by the cow. But, however careful the keeper of the horse had been he may still be found liable for the damage caused.

The reason for this, is that a characteristic of a horse is to bolt if frightened. As it was that characteristic which caused the damage, even if the cow had bolted when escaping, it was standing in the road at the time of the accident and therefore the characteristic of bolting did not cause the accident.

Such difficulties caused by recent interpretation of the Animals Act 1971, which governs such matters and which have so concerned the insurers of equine establishments, will hopefully lessen if the Animals Act (Amendment) Bill presently before Parliament is passed. Although introduced under the Ten Minute Rule as a Private Members Bill, it has cross-party support and receives its second reading in the Commons on the 19th October.

The new Bill seeks to remove strict liability for damage caused by normally none dangerous animals, which has been the reason for insurance premiums for riding stables increasing by as much as ten fold in five years. It does not, however, remove such liability for damage caused by dangerous animals.

It will still leave a claim of negligence, but that does allow the animal's keeper the opportunity to show that he has used all reasonable care and made all sensible safeguards to prevent an escape.

The Bill will have a vital effect on owners of animals and in particular the equine sector and deserves to be supported.

This leads to an associated matter, which has arisen on a number of recent occasions. If a fence clearly belongs to one landowner and the adjoining owner's animals escape through it because it is not maintained and cause damage, can the animal owner plead the failure to maintain as a defence to a claim by the fence owner for damage to his crops? In the event that a third party makes a claim can he put the blame on the fence owner for not repairing the fence?

The answer is usually no. Ownership of a fence does not automatically carry with it the obligation to maintain it. The usual rule is that you must fence in your own stock in these circumstances by erecting a fence on your own land. Usually only if the ownership carries a clear obligation to maintain the fence in a stockproof condition can the fence owner be liable. T marks on a plan may denote ownership of the boundary but do not of themselves identify liability for maintenance.

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