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Crazy horses? Exploring the risks to spectators at Equestrian events

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Abstract

In addition to the risks common to other sporting competitions, equestrian events also have potential risks for visitors due to the inherent unpredictability of the horses being displayed. They are by nature, flight animals which may mean that in the event of an incident during a race or competition, a horse might panic and encroach into the spectator area. If an injury subsequently occurs as a result of this, an injured spectator may be prohibited from recovering damages depending on their purpose within that area and the degree to which they have consented to the risk.

This paper will explore the rationale behind when, where and how this consent has occurred, looking particularly at where the risks may be exacerbated due to the inexperience of the participants, spectators and the event organisers; the paper will examine whether the recent Northern Ireland negligence case of *Browning v. Odyssey Trust Company Ltd & Belfast Giants 2008 Ltd* has implications for spectator safety and will conclude by arguing that three areas in particular (the liabilities towards spectators, media personnel and officials) merit further research and clarity.

Keywords: *Equestrian, Event Management, Safety, Spectator, Animals Act 1971, Occupiers' Liability Act 1957*

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INTRODUCTION

The interest and awareness surrounding equestrian sports has largely increased over the past 10 years. Following the success of Team GB at the 2012 Olympics and the World Equestrian Games 2014, it is expected that this interest will continue. Indeed, equestrian sports have had their funding increased from £13.4m to £17.9m:

“This allocation enables the sport to continue to maximise its successes on the world, Olympic and Paralympic stages as well as helping to develop elite riders for future success.”¹

This increase is also reflected in participation figures and popularity of the sport. The British Equestrian Trade Association’s (BETA) national survey 2011 found that an estimated 3.5 million people in Britain rode during 2010-11, 1.1 million more than in 1998-9;² while in 2014, the CNN TV Network announced that they would be increasing coverage on equestrian sports:

“Equestrian sport will take to a new international stage as global broadcaster. CNN International plans to feature hugely increased coverage of equestrian sport over the next three years.”³

The problem, as Caroline Bowler highlights, is that this increased popularity can also become a double-edged sword and that more people who may not have a great degree of experience are buying horses to engage in this pastime.⁴ While this popularity is undoubtedly good for the sport, this paper will examine whether this could also lead to a rise in negligence claims as a result of the numbers of inexperienced owners (or horses). The paper will also examine what implications the presence of “non-equestrian” people at equestrian events will have, particularly in light of the recent Northern Ireland negligence case of *Browning v. Odyssey Trust Company Ltd & Belfast Giants 2008 Ltd*.⁵

DOMESTIC BLISS?

The first point to be considered is whether or not an equestrian accident has sufficient grounds to form a claim. The key statute in this area is the *Animals Act 1971*. Within that statute, the critical section is s.2(2) which discusses liability for damages done by dangerous (domestic) animals. The section states that:

“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

¹ Author uncited, ‘Olympic sport funding: Winners and losers, sport by sport’ *BBC Sport* (19 December 2012) (online) [<http://www.bbc.co.uk/sport/0/olympics/20780450>]

² Beta Industry Information – Market Information [www.beta-uk.org/pages/industry-information.php]; although it is worth noting that, anecdotally, there are there may be less smaller events held in rural villages than previously

³ Author uncited, ‘CNN to feature massively increased coverage of world’s premier equestrian events’ *FEI News* (15 August 2014) [<https://www.fei.org/news/cnn-feature-massively-increased-coverage-worlds-premier-equestrian-events>]

⁴ L Trevelyan, ‘The Rise in Equine Law’, *Law Society Gazette* (7 August 2008) [<http://www.lawgazette.co.uk/analysis/the-rise-in-equine-law/47464.fullarticle>]

⁵ *Browning v. Odyssey Trust Company Ltd & Belfast Giants 2008 Ltd* [2014] NIQB 39

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(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."⁶

Although there are comparatively few cases involving horses and spectators, there have been a number of incidents involving horses and members of the public. These cases help to explain when the courts view horses as dangerous and what characteristics are deemed as 'normally found in animals of the same species'. In the determination of what constitutes a domestic animal, it is worth considering the principle in *McQuaker v. Goddard*⁷ in relation to domesticity:

"the expression of a 'domestic animal' means any horse, ass, mule... which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man."⁸

Following the decision of this case, horses will be viewed as domestic animals when looking at accidents which occur at equestrian shows and events involving horses and spectators, due to the animal 'serving some purpose to man'.

So what then constitutes a 'known characteristic'? In the case of *Wallace v. Newton*,⁹ the court held that the words in *Section 2 (2)(b) Animals Act 1971* were to be given their ordinary and natural meaning. The context of the case, was that an incident occurred when a horse (which was known to be temperamental and nervous) was being led onto a trailer. The horse subsequently became violent and uncontrollable and in the process crushed the claimant's arm. Under the rule in s.2(2)(b), the claimant did not have to establish that the horse had a vicious tendency to injure people, but rather that it was sufficient for her to show that the horse was both unpredictable and unreliable in his behaviour and in that way dangerous. As Helen Niebuhur explains:

"Even where a horse owner is not negligent in any way, they can still be held responsible for injury or damage caused by their horse;"¹⁰

This suggests a sort of strict liability or non-delegable duty where an owner is liable regardless of the actions of any rider. In a sense, this type of liability would be very much based on a 'deepest-pockets' approach:

"The policy choice is whether the innocent victim or the innocent animal owner is to bear the risk... animal owners can insure themselves or choose to take the risk of personal liability."¹¹

⁶ [<http://www.legislation.gov.uk/ukpga/1971/22/section/2>]

⁷ *McQuaker v. Goddard* [1940] 1 All ER 471

⁸ As summarised by Simon Brooman and Dr Debbie Legge in *Law Relating to Animals* (Cavendish Publishing Ltd, 1997) 227

⁹ *Wallace v. Newton* [1982] 2 All ER 106

¹⁰ L Trevelyan, 'The Rise in Equine Law', *Law Society Gazette* (7 August 2008) (online) [<http://www.lawgazette.co.uk/analysis/the-rise-in-equine-law/47464.fullarticle>]; although note Lord Justice Lewinson's strong comments in *Turnbull v. Warrener* that a Victorian horseman or horsewoman would scoff at suing an owner for damages if they fell off a horse. [2012] EWCA Civ 412, [46]

¹¹ K Amirthalingam K, 'Animal Liability: Equine, Canine and Asinine' (2003) 119 (Oct) LQR 563, 564

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This ‘known characteristics’ principle has been further explored by a number of other equestrian vs motorist cases. In both *Clark v. Bowl*¹² and *Mirvahedy v. Henley and Another*,¹³ the claimant motorists tried to overtake a horse being ridden (or in the case of *Mirvahedy*, rider-less) along a narrow grass verge on a public road. Unfortunately, during the overtaking maneuver, the horse moved into the road damaging both the car and causing personal injuries to the defendants. In giving judgement for the defendant rider in *Clark*, Lord Justice Sedley stated that:

“Section 2(2) is not intended to render the keepers of domesticated animals routinely liable for damage which results from characteristics common to the species, it requires something particular.”¹⁴ (For example, a horse bolting when it became ‘spooked’).

The final case, and perhaps the one most relevant to this paper, is *Bativala and Another v. West (trading as Westways Riding Academy)*.¹⁵ In this case, the defendant held a gymkhana on ground adjacent to a busy highway. The enclosure was roped off, but had a gap to form an entrance for competitors and their horses to enter and leave. Competitors had been made aware of the need to ensure that their horse tack was safely secured; however when one of the competitors was riding her horse, the saddle ‘slipped’ and she fell off. The horse escaped onto the highway and collided with a car. Although the case did not fall under Section 2(2), the defendant was still liable for failing to take reasonable care to prevent the animal from escaping onto the highway. Of particular interest is the observation by Mr Justice Bridge that:

“If this does happen [the horse bolting] there is really no predicting the direction likely to be taken by the frightened animal running away, or the distance it is likely to go if unchecked before – if I may use the expression – it runs out of steam.”¹⁶

While the case itself did not concern injuries to the spectators at the gymkhana, it is worth considering whether it would have been possible for a spectator to have claimed against the organiser had they been injured?

SPECTATORS, STEWARDS AND SPECIAL PARTICIPANTS

As the subtitle of this section alludes to, there is an interesting debate within equestrian sports negligence as to who actually falls under the ‘spectator’ title. At equestrian events there are nearly always an array of people there for different reasons:

- General members of the public
- Visitors to the event for a purpose other than the sport (for example trade stalls, drivers etc)
- Owners of the horses
- Media personnel
- Grooms and trainers
- Officials: whether judges (outside the arena) or Course builders and pole pickers (inside the arena)

¹² *Clark v. Bowl* [2006] EWCA Civ 978

¹³ *Mirvahedy v. Henley and Another* [2003] UKHL 16

¹⁴ *Clark v. Bowl* [2007] PIQR P12, 24 (Per Sedley LJ)

¹⁵ *Bativala and Another v. West (trading as Westways Riding Academy)* [1970] 1 All ER 332

¹⁶ *Bativala and another v. West (trading as Westways Riding Academy)* [1970] 1 All ER 332; [1970] 1 QB 716, 722 (Bridge J)

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If all of these parties are in proximity to the arena or race-course, is it possible to differentiate the legal liabilities owed to them by virtue of their licence to be on the property, or in any legal action would they all be treated as simply being spectators?

Unfortunately, there is no strict legal definition of who is, and is not, classed as a spectator. The Oxford Dictionary gives the word 'Spectator' its normal every day meaning with the following definition:

"A person who watches at a show, game, or other event."¹⁷

Given the wide scope of this definition though, it still means that almost everyone at an event could potentially fall into this category. One way it could be further narrowed is by considering how much of a passive/ active role is being performed by the visitor. For the purposes of this paper, it would be possible to split these categories into broadly three main areas of spectator:

- The traditional concept of a spectator (being somebody that is watching or present at the event)
- Media personnel, who may need to get closer to the action (for a specific occupational purpose)
- Stewards, officials and trained staff (who are assisting the riders and/or event organisers)

There is no problem with classing the members of the general public as spectators, and this would fit with both the common sense view and indeed their own self-description as they are there specifically to watch (and spectate at) the event. There are however a distinct lack of reported cases where general members of the public have actually been injured at equestrian events.¹⁸ In part, this illustrates the very low risk of such an occurrence, however the lack of data may also be due to cases being settled outside of court, for example through settlements or insurance. There have however been two cases in America where bronco riders have been thrown from their horses and landed in the spectator area. In *Creel v. Washington Parish Fair Association*,¹⁹ the association and rodeo producer were found liable for arranging and approving the spectator seating too close to the arena. Whereas in *Mahan v. Hall*,²⁰ the rodeo promoter was found not liable as he was able to show that the gate was secured and maintained in a reasonably safe manner. Therefore it can be argued that as long as the organiser(s) follow the correct guidance given to them by the relevant associations (for example, the BSJA assessment form²¹ and Guidelines for Event Organisers)²² this could be used as evidence that they have not breached any duty of care. It is however worth noting that in two other sports cases: *Watson v. British Boxing Board of Control*²³ (Boxing) and *Fenton v. Thruxton*²⁴ (Motor-racing), the courts held that compliance with the respective national governing body risk assessment and policies did not of itself constitute an absolute defence, if a foreseeable risk still existed.

There have also been two comparatively recent (2011) international examples (which to the author's knowledge have not led to further legal liability) where horses have collided with

¹⁷ [<http://www.oxforddictionaries.com/definition/english/spectator>]

¹⁸ Although note the infamous New Zealand case of *Evans v. Waitemata District Pony Club* (1972) NZLR 773, where a tethered horse ran amok amongst spectators at a pony club gymkhana.

¹⁹ *Creel v. Washington Parish Fair Ass'n*, 597 So. 2d 487 (La. Ct. App. 1992)

²⁰ *Mahan v. Hall*, 897 S.W.2d 571 (Ark. 1995)

²¹ British Show Jumping Risk Assessment Form [http://www.britishshowjumping.co.uk/files/Risk_Assessment_Form.pdf]

²² The British Horse Society, Guidelines for Event Organisers [http://www.bhs.org.uk/~/_/media/BHS/Files/PDF%20Documents/BHS%20Event%20Organisers%20Guidelines.ashx]

²³ *Watson v. British Boxing Board of Control* (BBBC) [2001] 2 WLR 1256

²⁴ *Fenton v. Thruxton (BARC) Ltd* (2008) (unreported) (Basingstoke County Court)

spectators at an event. The first incident occurred at an Australian Steeplechase²⁵ - a horse jumped the fence into a crowd of spectators. This led to a two year old girl having a fractured collarbone and an eighty year old woman being admitted to hospital. The second incident occurred at a racetrack in Indiana when a rider was unseated from their sulky during a harness race and the spooked horse veers off directly into the crowd of spectators. Thanks to good fortune and the quick-thinking actions of an onlooker, the horse is safely recaptured and calmed down without any serious injuries occurring.



Warnambool



Indiana

Applied to equestrian events in England, although the most recent (non-equestrian) spectator safety case at an ice-hockey venue (*Browning v. Odyssey Trust*)²⁶ would seem to suggest that a spectator voluntarily accepts the ordinary risks of watching an event, it is worth considering whether *Browning* can be distinguished from equestrian events? Probably the most important direct case precedent in this area is that of *Wooldridge v. Sumner*,²⁷ which was cited with approval in *Browning*.²⁸ *Wooldridge* concerned a claimant spectator (photographer) who was injured within the show ring during a performance. The defendant was a very experienced horseman who during the event had galloped his horse so fast that the corner had to be taken wider than anticipated; resulting in the horse becoming temporarily out of control. This overshoot led to the claimant, who was not experienced with horses, panicking and stepping or falling back and becoming injured by the horse. In giving judgment for the defendant, Lord Justice Diplock stated:

*"If in the course of a game or competition, at a moment when he has not time to think, a participant by mistake takes a wrong measure, he is not to be held guilty of any negligence."*²⁹

This is an important principle and has been restated by academics and judges alike:

*"In the context of an injury to a spectator alleged to have been caused by the negligence of a participant, liability would only be founded if it was shown that there had been a reckless disregard for the spectator's safety."*³⁰

*"Provided the competition or game is being performed within the rules...a person of adequate skill and competence, the spectator does not expect his safety to be regarded by the participant."*³¹

The problem that a spectator at an equestrian event would have to overcome is whether they had impliedly or expressly consented to the risks of the activity,³² in which case, given the inherent unpredictability of horses, and their propensity to become spooked,³³ it may be that any claim is unsustainable. Indeed, in many gymkhanas, there are often only a few spectators present - mostly relatives and friends of the competitors.³⁴

²⁵ Author uncited, 'The terrifying moment a riderless horse jumped barrier and landed on unsuspecting spectators during prestigious steeplechase' *The Daily Mail* (6 May 2011) (online) [<http://www.dailymail.co.uk/news/article-1384238/Seven-injured-runaway-horse-jumps-fence-ploughs-spectators-steeple-chase.html>]

²⁶ *Browning v. Odyssey Trust Company Ltd & Belfast Giants 2008 Ltd* [2014] NIQB 39

²⁷ *Wooldridge v. Sumner* [1963] 2 QB 43

²⁸ [16] (Gillen J)

²⁹ Craig Moore, *Sports Law and Litigation* (Second Edition, EMIS Profession Publishing, 2000) 85

³⁰ Craig Moore, *Sports Law and Litigation* (Second Edition, EMIS Profession Publishing, 2000) 81

³¹ Kirsty Horsey and Erika Rackley, *Tort Law* (Third Edition, OUP, 2013) 208

³² Simon Brooman and Dr Debbie Legge, *Law Relating to Animals* (Cavendish Publishing Ltd, 1997) 229

³³ S Croxford, 'Olympics were great, shame about the cameras' *Horse&Country* (29th August 2012) [<http://www.horseandcountry.tv/celebrity/steph-croxford/olympics-were-great-shame-about-cameras>]

³⁴ *Bativala and another v. West (trading as Westways Riding Academy)* [1970] 1 All ER 332; [1970] 1 QB 716, 719 (*Bridge J*)

The only difficulty for organisers would be in relation to any spectators who may have less experience with equestrian activity, as compared to team sports or mechanised races such as motor sport which may follow more controlled routes. In *Browning*, this argument was too steep a hurdle for the claimant as the stadium was able to evidence a plethora of warnings (over the tannoy system, on tickets and at the entrances to the venue), however this could be a potential weakness for smaller equestrian event organisers, particularly if the spectator barriers amount to little more than a roped-off area.

Following *Wooldridge*,³⁵ there are also no problems with describing media representatives as (active) spectators. Indeed, in that case, the photographer was judged as a spectator. More recently, a photographer (Patrick McCann) was injured at the Cheltenham Festival³⁶ during a race when two horses came crashing through the barrier; McCann received a broken leg which had to be operated on, and as a result the incident will be included in the 2015 Cheltenham Festival Review.³⁷ This may mean the possibility of future changes to the rules regarding spectator safety and where media personnel are allowed to stand within events (although representatives from the track have suggested that they had no immediate concerns about the rules on where photographers are allowed to work).³⁸ It is also worth pointing out that there are a number of differences between this incident and the *Wooldridge* case; McCann was an experienced National Hunt photographer, whereas the photographer in *Wooldridge* was not experienced with horses. Another key differentiation is that in *Wooldridge* the photographer was in the show ring, and therefore had no barrier to protect him, whereas McCann was stood behind the barrier, and it was this that actually struck him and contributed to the injuries. What is however clear is that photographers and media personnel implicitly consent to the risk of injury inherent in the sport being observed.



McCann

The blurred area with regards to the title of 'spectator' comes when we look at pole-pickers, course builders and stewards. While all of these people are watching the event, the normal definition of spectator, they are primarily present in the arena for other reasons, therefore the extent of their role within the show and the running of it needs to be considered. The British Horse Society's Code of Practice states in Section 6.1 that "*competitors must consider the health and safety of other competitors, spectators and those working or assisting at the show;*"³⁹ this rule would therefore suggest that the BHS regard these people as something other than spectators. Also due to these people having a more active role within the running of the competition, it could be argued that they were more than a spectator and therefore a different duty of care would be owed to them, not only by the competitor but also by the event facility and any organisers. Interestingly, the employment status of the official may have very different effects on liability. For example, volunteers would be considered to have accepted the risk of injury under s.5(2) of the *Animals Act 1971*, thereby preventing any claim from an inherent risk of the activity. By contrast however, an employee

³⁵ *Wooldridge v. Sumner* [1963] 2 QB 43

³⁶ Darren Boyle, 'Terrifying moment photographer is knocked off his feet after being struck by barrier hit by horses at Cheltenham Festival' *The Daily Mail* (11 March 2015) (online) [<http://www.dailymail.co.uk/news/article-2990227/Terrifying-moment-photographer-knocked-feet-struck-barrier-hit-horses-Cheltenham-Festival.html>]

³⁷ Greg Wood, 'Photographer injury incident will be in Cheltenham Festival review' *The Guardian* (12 March 2015) [<http://www.theguardian.com/sport/2015/mar/12/photographer-injury-incident-cheltenham-festival-review>]

³⁸ See also previous accidents involving photographers, for example: W Hayler, 'Photographer hurt as horse crashes through rail at Cheltenham Festival' *The Guardian* (14th March 2002) [<http://www.theguardian.com/sport/2012/mar/14/champion-chase-nicky-henderson-cheltenham-festival>]

³⁹ The British Horse Society, Code of Practice for the Welfare of Horses and Ponies at Events, [<http://www.bhs.org.uk/~media/BHS/Files/PDF%20Documents/BHS%20Code%20of%20Practice%20for%20the%20Welfare%20of%20Horses%20and%20Ponies%20at%20Events.ashx>]

performing the same role may be immune to a defence based on consent, by virtue of the voluntariness (or otherwise) of their employment relationship:

“An employee cannot consent to the risk of an animal being dangerous”⁴⁰

If this is accepted by the courts, this would have the paradoxical effect that the person, arguably most familiar with the characteristics of horses and the inherent risks of an event, is also the person most able to claim (since they would probably have the greatest exposure to the risk and no statutory immunity). That said, there is however an argument that even if the volenti / consent defence failed, any claim by the officials could be defeated by the skilled visitors section s.2(3(b) of the *Occupiers' Liability Act 1957*:

“An occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.”

CONCLUSIONS

It is clear that there are a lot of unexplored areas within spectator safety and equestrian events, indeed further complexities may come to light in future years as the sport increases in popularity. Unlike other competitions in traditional ball-sports, it is perhaps the lower-level competitions and equestrian events that potentially have the greater risks for visitors due to the inexperience of the participants, spectators and the event organisers. What this paper has demonstrated is that three areas in particular (the liabilities towards spectators, media personnel and officials) merit further research and clarity.

Horses are flight animals by instinct which may mean that in the event of an incident during a race or competition, a horse might act unpredictably and panic, with the resulting consequences of an encroachment into the spectator area. If an injury subsequently occurs as a result of this, an injured spectator may be prohibited from recovering damages depending on their purpose within that area and the degree to which they have consented to the risk. What this paper is outlining is that greater clarity needs to be provided as to the rationale behind when, where and how this consent has occurred. Incidents involving horses and spectators might be thankfully rare, however it is still a very real risk and one that it behooves us to plan for...

⁴⁰ Kublin v. Jane Allison Equestrian Limited (2013) (unreported) (Oxford County Court) [6(v)] (Recorder Moulder)

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