Practicing Horse Sense
A Primer on Equine Law

John F. Stockman

Horse racing and jousting were once sports for kings, knights, and noblemen who did not have to worry about tortfeasance. Today, horse enthusiasts are legally responsible for injuries, even those resulting from the simple fact of ownership. Whether an equine pet is kept at home or placed in a professional stable makes no difference. Although primary responsibility may shift, it can never be eliminated for the owner. Business counsel and defense counsel must impress upon their clients that ownership or professional caregiving includes the duty to provide a secure facility that is separated from casual contact with humans and offers a safe environment for equine activities.

Illustration by Andrew O. Alcala

Drivers and pedestrians easily understand the concepts of basic liability, but horse owners and stable operators are a different breed. My lectures at veterinarian schools, agricultural extension courses, and horse expositions—where I hear howls of "that can't be right!"—have convinced me that animal lawyers must promote an understanding of equine liability problems and their appraisal and prevention.

As with all tort disputes, a determination of the existence of a duty is primary. The "reasonably prudent person" standard prevails, obligating those in positions of responsibility to take steps to protect humans and horses alike. *See Pike v. Nesset*, C7-02-1882, 2003 Minn. App. LEXIS 578 (May 13, 2003) (unpublished) (trainer in position of authority had duty to use due care to prevent injury). The standard of care necessary hinges on the person's skill and knowledge. The owner of mares and geldings that are stabled far from town is held to one standard while another applies to the owner-operator of a commercial training barn. The practice of the reasonably prudent person within a given discipline, profession, or experience establishes the standard of care.

Taking Precautions

A child escapes supervision and wanders into a paddock. What issues challenge the defender against injury claims? Could the reasonably prudent owner foresee that a child might want to pet the pretty horses? *See Pullen v. Steinmetz*, 16 P.3d 1245 (Utah 2001) (plaintiff failed to demonstrate that the stable owner knew or had reason to know that children were likely to trespass). A duty of care exists if the injury was reasonably foreseeable. *See Oswald by Thies v. Law*, 445 N.W.2d 840, 842 (Minn. Ct. App. 1989). Of course, stables with outside visitors should have at least minimal precautions in place. Requiring that adults always accompany children is effective, as are posted signs warning of the dangers, with verbal warnings to visitors that horses, even when friendly, can be dangerous.

Most people with experience around stallions recognize a special duty of care. Stallions are by nature aggressive and have a dangerous propensity to cause harm. Thus, stallion owners generally stable these creatures in high, solid enclosures. Those with responsibility for Shetland ponies that bite, playful colts, or high-strung park horses also have an elevated duty to prevent trouble. *See Harris v. Breezy Point Lodge, Inc.*, 56 N.W.2d 655, 658 (Minn. 1953). An owner who neglects to act is liable if he or she had knowledge that an animal has dangerous or vicious tendencies that would put a reasonable person on guard. *Hagerty v. Radle*, 37 N.W.2d 819, 828 (Minn. 1949). For owners who rent horses for riding lessons or trail rides, special care begins with a conscientious effort to match rider and horse.

How can an owner ensure that all reasonably prudent precautions are in place? Holding regular inspections of the facilities, and all equipment and tack accessible to visitors, and keeping written records of the inspections, findings, and repairs is essential. The record will show potential problems were considered and reasonable efforts were made to avoid injury. Instruct your clients to imagine and warn against any risks that could occur in their particular setting—but also keep in mind that the level of responsibility is directly related to the experience of the visitor. For example, professional breeders would be expected to know the dangers associated with a stallion, but riders on their first trail rides would neither understand the dangers nor take precautions. Similarly, individuals under the influence of alcohol or chemicals, experienced or not, cannot be held to their customary level of knowledge if an accident does occur. Without enforced procedures, signs, announcements, evaluations of riders' abilities, and well-maintained equipment, the exposure to liability claims is extensive.

Shifting Responsibility

Owners who board out their horses may partially shift responsibilities to the stable operator. The stable owner can satisfy the minimal requirements for both the owner and stable by applying high standards of care and feeding of the horses and care for the facilities.

But the shift of responsibility may not be effective. If the horse owner fails to inform the stable of a horse's dangerous habits or selects a facility with inadequate protection, the owner may still be held responsible for injuries. Where the owner does not recognize inadequate precautions at the stable and fails to relocate the horse as a result, both the stable and horse owner may be held responsible for injuries.

Waivers are seen as mighty and fearsome, and may ensure a successful defense (*see Beehner v. Cragun Corp.*, 636 N.W.2d 821 (Minn. Ct. App. 2001) (exculpatory agreement enforceable where applicable to ordinary negligence)), but they frequently prove inadequate against claims for injuries. Waivers are customarily signed before competitions or as part of a boarding agreement but they are unenforceable in many jurisdictions. In theory, an individual can waive a claim in advance only where there is understanding of the risks. Waivers best support the defense of a plaintiff's assumption-of-risk. *See Andren v. White-Rodgers Co.* 465 N.W.2d 104, 104-05 (Minn. Ct. App. 1991), *review denied* (Minn. Mar. 27, 1991).

Because of the need for understanding risks, the conventional waiver is weak protection in cases where the injured party is a child, novice adult, or intoxicated. Parents who encourage their children to ride but have no experience with horses themselves also do not sufficiently understand the risks involved to provide a knowledgeable release. These same concerns apply to stables that lease schooling horses to novices or provide trail rides to any stranger able to pay the fare. Also note that waivers will not protect against the results of reckless or intentional acts. *See supra Beehner*. Even so, waivers are clearly the most effective first line of defense, forcing the plaintiff to explain why the waiver should be ignored. ❖

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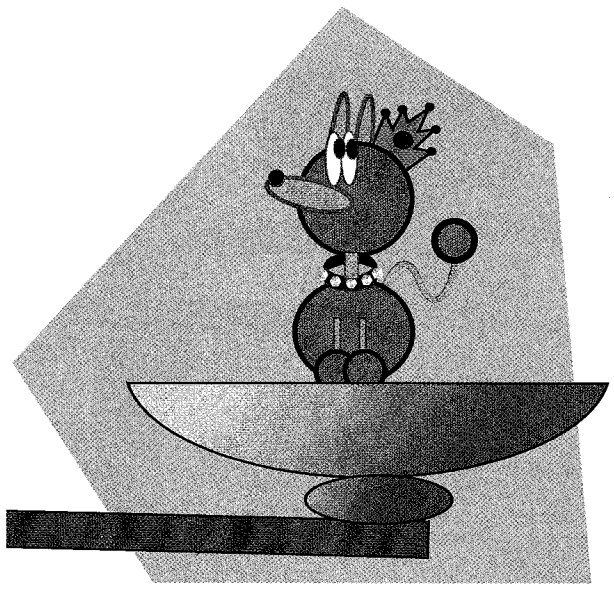
How Much Is That Doggie in the Window: Valuation for a Lost Pet

continued from page 1

Issues of harm and damages to many animals have not changed much from how they were resolved 100 years ago. But the issue of harm to pets has prompted reconsideration of old limitations. Pets have replaced farm animals as the primary source of animal-human interaction. Pet ownership now is widespread, with more than 100 million dogs and cats residing in U.S. homes. Some humans undoubtedly have had special relationships with domestic animals ever since they were brought into human households, but it is just in the past decade that the world of science has confirmed the real, noneconomic value of pets as companions. (General discussions of this issue are available at www.animallaw.info/topics/spuspetdamages.htm.)



For most people the relationship between a human and a pet is not based on economic considerations. Indeed, like children, pets cost money that can never be expected to be recovered. Although some pets win awards and command high-dollar breeding and offspring fees, the vast majority of pets are just members of the family. The bond between humans and pets is not imaginary and can contribute significantly to individual well-being. One objective measure of a pet's value to a person is the amount of money an owner is willing to spend for veterinary care. A cat with little or no market value may require surgery that can cost hundreds or thousands of dollars, and many owners are willing to pay such amounts.

Before damages for a person's pain and suffering for loss of or injury to a pet are allowed, a number of difficult questions must to be resolved. Although many humans do seriously believe that a pet is a family member, the law has not gone quite this far. A pet is still property—living, special property, but property nonetheless. But pets give rise to a number of public policy questions: How can the system evaluate whether an individual suffered emotional trauma from injury to or death of a pet—particularly if the person was not present during the incident? How do we measure the degree of loss? How do we handle the risk of turning this emotional issue over to a jury that may see tears on one side and deep insurance pockets on the other?

The Cases

In 1981 the Supreme Court of Hawaii, in *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981), set a precedent for a new interpretation in "pet law" by upholding an award for mental distress to five members of a family whose dog was killed while being transported to a private hospital by a state agency. The dog had been kept in an unventilated van in the hot sun and died of heat prostration after arriving at the hospital. The court upheld the $1,000 award even though family members had not watched the animal die or seen its body; they learned of its death in a phone call, and no member found it necessary to seek psychiatric or medical assistance. Public policy discussion was not really present in the case. It seems the court was unaware of the sweeping changes its opinion represented.

The Wisconsin Supreme Court in *Rabideau v. City of Racine*, 627 N.W.2d 795 (Wis. 2001), was faced with this fact pattern: a woman watched as a neighbor police officer shot and killed her dog. Although the court recognized the bond between owner and pet, it said that public policy prevented recovery based upon either negligent infliction of emotional distress to a bystander or negligent damage to her property. The court noted that under certain circumstances a person could recover for intentional infliction of emotional distress for harm to a pet, but it also stated:

> We are particularly concerned that were such a claim to go forward, the law would proceed upon a course that had no just stopping point. Humans have an enormous capacity to form bonds with dogs, cats, birds and an infinite number of other beings that are non-human. Were we to recognize a claim for damages for the negligent loss of a dog, we can find little basis for rationally distinguishing other categories of animal companion.

In *Pickford v. Masion*, 98 P.3d 1232 (Wash. 2004), the plaintiff's dog was mauled by the defendants' dogs and sustained permanent injuries. The trial court granted summary judgment against the plaintiff's claims of negligent and malicious infliction of emotional distress. The court of appeals affirmed the grant of partial summary judgment and further held that the destruction of the companion relationship could not be extended to dogs: "Such an extension of duty and liability is more appropriately made by the legislature."

Continuing Need for Change

Even though the courts have shown a reluctance to make new law regarding this issue, it will not go away anytime soon. The emotional harm is real, and actions against animals are often too egregious to be ignored; it seems unfair that the risk to a wrongdoer is limited simply to the market value of a harmed pet. Although recovery for human pain and suffering is all well and good, it does not address the real harm, the harm to the animal. The best response of the legal system to a wrongdoer who harms an animal should be on behalf of the animal harmed, directly, by allowing the animal to recover for that harm and be made whole again. At the very least, a wrongdoer should be liable for all reasonable veterinary costs necessary for the animal to recover from the inflicted injury or harm.

Given that the courts currently represent a dead end for damages resolution, the obvious alternative is the legislature. Indeed, legislative change has begun. Kentucky, Connecticut, and Illinois have adopted laws allowing pet owners limited windows of opportunity to recover for losses arising out of harm to a pet. Maryland does not allow collection for pain and suffering but clarifies that actual damage in excess of market value for the pet may be charged, up to $5,000 for veterinarian care. MD. CODE ANN. CTS. & JUD. PROC. § 11-110 (2002).

By the end of this decade, a significant number of states likely will have adopted laws that make some provision for enhancement of damages, beyond mere market value, for intentional and negligent harm to pets. ❖

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Legal Malpractice Insurance Basics

continued from back page

If I leave a firm to start my own practice, do I need to purchase full "prior acts" coverage, or should I rely on "former lawyer" coverage on the old firm's policy? Consider whether you want to rely on the continued existence of the former firm—and on its continuing to insure with a carrier that provides coverage for former attorneys.

Financial Considerations

What limits of liability should I carry? One of the best ways to determine this limit is to review the files in your office—both open files and recently closed files. Determine the maximum value of the file, i.e., if the work is transactional, determine the amount of the transaction and add items such as potential interest. If the case is a personal injury matter, evaluate the maximum damages. Remember to consider the number of lawyers in the firm because all of these lawyers share the limits on the policy. Keep in mind that you will also have an "aggregate limit" of coverage, which is the maximum amount available to pay all claims that arise within that policy year. One claim could exhaust not only your per-claim limit but also your aggregate limit for that policy year, leaving you at risk for personal exposure should another claims arise during the same policy year.

How do I determine an appropriate deductible figure? Decide what you can afford to pay in the event a claim is made against you. The difference in premium for a lower deductible generally is not significant. Remember that even a frivolous claim can generate defense costs. Also inquire about a "loss only" deductible, which will apply only if your defense is unsuccessful and a payment is made to the claimant.

What is the definition of "defense within limits"? This term means that amounts spent on defense will decrease the indemnity limits. Therefore it is important to consider the defense costs that might be incurred when you are trying to determine the policy limits for your practice. ❖

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