Strict Liability for Dangerous Animals

Compass Aberdeen Conference

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The Legislation

- Animals Scotland Act 1987 ("The 1987 Act")

- Provides strict liability for damage and injury caused by certain animals in certain circumstances

- Short Act: only 9 sections
Overview of 1987 Act

• “Keepers” of animals may be liable under the 1987 Act: Section 5

• Species of animal to which strict liability applies: Section 1

• Exceptions from liability (i.e. statutory defences): Section 2
Definition of a Keeper

• Wider than ownership:

  – A person who owns an animal or has possession of it [s 5(1)(a)]

  – A person who has care or control of a child who owns/possesses an animal [s 5(1)(b)]

  – Ownership/possession of animal continues after abandonment or escape until another person becomes the owner or takes possession [s 5(2)(b)]

  – Temporary detention of animal not possession [s 5(2)(a)]
Species Covered

• S1(1)(b):

• “the animal belongs to a species whose members generally are by virtue of their physical attributes or habits likely (unless controlled or restrained) to injure severely or kill persons or animals, or damage property to a material extent;”
Species

• “Species” includes:

  – a form or variety of the species or a sub-division of the species, or the form or variety, identifiable by age, sex or such other criteria as are relevant to the behaviour of animals; and

  – a kind which is the product of hybridisation.
Species

• The court must decide as a question of fact whether the species’ physical attributes or habits are likely to cause injury/ death/ damage to property, in terms of s1(b): *Foskett v McClymont 1998 S.C. 96*

• Expert Evidence may be required
Directly Referable

- **S1(1)(c):**

- Requirement for a causal link

- “the injury or damage complained of is directly referable to such physical attributes or habits.”
Mere Presence of Animal Not Sufficient

- S 1(5):
  - provides that the mere fact that an animal is present in a road or in another place does not give rise to strict liability
  - Possible alternative case of negligence? (e.g. *Davidson v McIrvine 2007 SLT (Sh Ct) 71*: bull in the road)
Animals deemed to be dangerous (1)

- Section 1(3)(a): certain animals are deemed to be likely (unless controlled or restrained) to injure severely or kill persons or animals by biting or otherwise savaging, attacking or harrying:
  - Dogs;
  - Wild animals in terms of the Dangerous Wild Animals Act 1976, s 7(4)
Animals deemed to be dangerous (2)

• S1(3)(b): in the course of foraging:

  – cattle, horses, asses, mules, hinnies, sheep, pigs, goats and deer,

  – shall be deemed to be likely (unless controlled or restrained) to damage to a material extent land or the produce of land, whether harvested or not.
Operation of the Act in practice

- *Welsh v Brady* [2009] CSIH 60

- **Facts**: A dog walker raised an action of damages against another dog walker for a knee injury sustained when the latter’s black Labrador dog collided with her whilst running at great speed

- Paras 8 – 19: explanation of how the Act works
Welsh v Brady Ctd.

- Section 1(3) did not apply:
  - the dog had not bitten, savaged, harried or attacked the pursuer

- Pursuer based case on section 1(1)(b)

- Expert evidence: general evidence on the dangers of untrained dogs led by pursuer
Welsh v Brady Ctd.

• Inner House held this evidence:

• “fell far short of what the statute requires for proof of strict liability. It went no distance at all towards demonstrating that black labradors (or any subdivision of the breed, whether by reference to age, sex or any other criterion) are, by virtue of their physical attributes or habits, likely to injure severely or kill persons or animals.”
Exceptions from Strict Liability: Section 2

• There are three statutory exceptions/defences to strict liability under section 1:

  – injury/damage wholly the fault of the person sustaining it, (or if the injury is to an animal, its keeper) s2(1)(a);

  – Person sustaining injury/damage “willingly accepted the risk” (or if the injury was to an animal, its keeper), s2(1)(b);

  – Injury/damage sustained on land on which the person (or injured animal) was not entitled to be, s2(1)(c); [subject to s2(2)].
 Authorities on the Exceptions

• There are a number of cases on the statutory defences under the parallel English legislation: Animals Act 1971, section 5:

  • Cummings v Grainger [1973] Q.B. 397;
  • Flack v Hudson [2001] Q.B. 698;
  • Freeman v Higher Park Farm [2008] Q.B. Civ 698;
  • Turnbull v Warrener [2012] EWCA Civ 412
  • Goldsmith v Patchcott [2012] ECWA Civ 183
Cummings

- **Facts:**
  - Barmaid trespasses into a scrapyard and is badly bitten by a “ferocious” guard dog.
  - She had prior knowledge of the dog and its fierceness. A sign outside the yard warned of the dog.

- **Held that two statutory defences applied:**
  - Reasonable to keep a guard dog [s 5(3)];
  - Barmaid had voluntarily accepted the risk [s 5(2)]
Omrod LJ on the statutory defences:

“It is important, I think, to remember that this is not a negligence action; this is not a fault liability situation; this is a strict liability situation, which is quite different. Therefore, the defences which are made available to the defendant by the statute are very important and ought not to be whittled away. To be fair to him and to be fair to the plaintiff, each of them must have their full statutory rights.”
Bridge LJ on acceptance of risk:

“Clearly, the two matters which must be proved in order to show that JJ somebody has voluntarily accepted the risk are (1) that they fully appreciated the risk and (2) that they exposed themselves to it.” (p410, letter H)
• All Horse-riding cases;

• All heard by Court of Appeal;

• Assumption of risk defence advanced in each case
Facts:

- Claimant’s wife was riding a horse which had a propensity to be frightened by agricultural machinery.
- The defendant, who was owner and keeper of the horse, knew of this characteristic but the claimant’s wife did not.
- The horse bolted when a tractor approached and the claimant’s wife was thrown to the ground, suffering fatal injuries.
**Hicks Ctd**

- **Assumption of risk defence rejected:**
  
  - the deceased had not been alerted to the horse’s aversion to agricultural machinery.
  
  - She was not aware of and therefore had not voluntarily accepted this specific risk.
Freeman

• Experienced rider thrown from horse

• Prior to the accident the rider is assessed by the stable, warned that the horse sometimes bucks and advised other horses are available.

• The horse bucks prior to the accident, but the rider is happy to continue

• Held: the rider voluntarily accepted the risk (Cummings applied)
• The parties were two experienced female horse-riders. The appellant/claimant had an arrangement with the respondent, by which she rode her horse regularly.

• Appellant thrown from horse while trying to canter in a field. It was wearing a bite-less bridle due to having a sore mouth.

• Pre-accident: appellant and respondent had walked/trotted horse in an enclosed area but not trotted it.
• Statutory defence of sole fault failed:
  – Both women at fault for allowing horse to be cantered in an open area

• Statutory defence of assumption of risk succeeded
  – Claimant knew risks associated with riding a horse with a bite-less bridle
Goldsmith

- Experienced horse-rider thrown from horse; argued that the horse bucked more violently than she had been given reason to believe

- Jackson LJ:
  
  “If the claimant foresaw the possibility of bucking and voluntarily accepted that risk, then s.5(2) is engaged. The fact that Red bucked more violently than anticipated cannot take this case outside s.5(2), so as to defeat the defendant’s defence.”
Contributory Negligence

• Discussed by the Inner House in *Ferguson v Ferguson [2015]* CSIH 63

• Facts:
  – Jury trial case, in which pursuer bitten by pet dog.
  – surrounding circumstances of accident disputed.
  – Evidence that just after the dog had woken up, the pursuer, who may have taken drink, had put her face close to his and had pulled the hairs on his face.
Ferguson / Contrib Contd

• Sole fault defence advanced, but did not succeed

• Jury award:
  – £5,000; but reduced this by 85% contributory negligence

• The Inner House declined to interfere
The court on contrib:

— “where liability is strict a defender may be found liable in damages without being guilty of any moral fault whatsoever, and therefore in a case where the pursuer is found to be some extent at fault that degree of fault, which may be small in absolute terms, will weigh heavily in relative terms because there is nothing by way of culpability on the other side of the balance.” (para 23)
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