

# COMPETITIONS AND EXONERATIONS

**Dutch equestrian competition organisers frequently use liability exclusions, or so-called exoneration clauses. Prior to competing, participants often are required to sign an exoneration clause, so the organising committee of the event cannot be held liable in case of an accident for any damages suffered by the competitor and/or their horse.**



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However, the Court of Appeal in 's-Hertogenbosch, the Netherlands, gave a verdict showing that the organising committee cannot always call upon the exoneration clause, especially in cases where the organisation of the event has not complied with applicable national and international regulations set by the Royal Dutch Equestrian Federation (KNHS) and the Fédération Equestre Internationale (FEI).

## THE CASE IN POINT

Organising committee X had staged an eventing competition in October of 2010 under the regulations of the KNHS. An eventing competition consists of (1) a dressage test, (2) a

jumping course and (3) a cross country course. This cross country test is conducted in a natural environment, such as woodland and fields. On a preset course, rider and horse have to overcome various obstacles, including walls, water crossings, ditches, trees and similar jumps. So-called mobile fences are also used. The cross country course was built by Y, an experience course designer with a KNHS license. Rider Z had registered for the competition through the 'Vraagprogramma SGW-Eventing' of the KNHS.

## MOBILE FENCE

After completing the dressage and jumping phases with his horse

without any problems, rider Z started on the cross country phase. Coming to the last fence, the horse misjudged the take-off and hit the fence. As a result, Z and his horse endured a heavy fall. The horse was so gravely injured it had to be euthanized by a veterinarian and Z sustained injuries to his ribcage. The obstacle in question was a so-called mobile fence in the shape of a farmhouse. It had been towed into place by a tractor and planted into the ground by pins from above. The jump had not been secured, braced or anchored into the ground by any means. This caused the obstacle to topple over at the impact of the horse and rider, into the direction of travel of the horse, and to continue toppling.

## REGULATIONS AND LIABILITY

In the KNHS regulations set in the Vraagprogramma SGW-Eventing used by rider Z to register for the competition, regulations included that (1) the competition would be conducted under the rules and regulations of eventing competitions of the KNHS, and (2) that the organisation of the competition, nor any other person involved in the competition, could be in any way held liable and/or accountable for any damages to persons, horses and/or material. Both participants and spectators attended the competition at their own risk. Rider Z started legal procedures against organising committee X as well as course designer Y, demanding payment for the damages suffered.

## PRINCIPLES OF REASONABILITY AND FAIRNESS

Organising committee X and course designer Y defended themselves by calling on the exoneration clause in



Photos: Remco Veuring/BCM

*Who is liable after a fall during competition?*



*With such extreme jumps, cross country fences need to be built very safely.*

the Vraagprogramma SGW-Eventing. Both the Court and the Court of Appeal denied this appeal on the exoneration clause. Dutch law states that the principles of reasonability and fairness can overrule an appeal on contractual clauses. Whether this is applicable in any concrete case depends on all the relevant circumstances of the case, according to case law, such as the nature and further contents of the agreement the clause is featured in, the positions and internal relations between the parties, the way the clause was formed and the degree to which the other party was aware of the implications of the clause; and in the case of exoneration clauses, the degree of blame for cause of the damage, combined with the nature and the severity of the interests involved in any actions taken. In general, an exoneration clause is not supposed to be used if the damage was caused intentionally or by conscious recklessness by the party held liable.

## MOTIVATION

The Court and the Court of Appeal judged that serious accusations could be made to organising

committee X and course designer Y regarding the unsecured fence that caused rider Z and his horse to fall, and therefore the appeal made by them on the exoneration clause was unacceptable on the principles of reasonability and fairness. The Appeal Court's motivation was as follows:

1. The applicable national and international regulations of the KNHS and FEI show that in the case of cross country competitions, it is of the utmost importance to safety that mobile fences are secured, so that the fence will not fall over upon contact with horse and rider. Even if it could not be derived from this regulation without any doubt that ground anchors are always required, the regulations still show in clear terms that the knocking over of fences should be prevented. This could potentially be reached with a sufficiently solid anchor, but there were no such measures taken.
2. Organising committee X and course designer Y could have taken simple precautions without any difficulty, such as anchoring the mobile jump into

the ground by an L-bar or bracing it with sufficiently heavy beams.

3. In the case of unsecured jumps, the serious risk of damage to persons or property should be taken into account.
4. There was no reason for rider Z to suspect or anticipate that the jump was not secured.
5. In addition, the fact that organising committee X and course designer Y were insured for liability also played a part.

## RELEVANT CIRCUMSTANCES

The Court sentenced organising committee X and course designer Y to the payment of the damages suffered by rider Z, and the Court of Appeal confirmed this verdict. This however does not mean the organising committee of a competition cannot appeal to the exoneration clause in any case. The relevant circumstances of a particular case are always the determining factor. However, when the applicable national and international regulations of the KNHS and FEI have not been met an appeal by an organising committee on an exoneration clause will quickly

prove to be unacceptable on the principles of reasonability and fairness. ■

The full arrest of the Court of Appeal can be read at [www.rechtspraak.nl](http://www.rechtspraak.nl) by entering the code: ECLI:NL:GHSHE:2014:1426. For more information, please contact Mr. V. Zitman at Schelstraete Advocaten, via e-mail at [info@schelstraete.nl](mailto:info@schelstraete.nl) or via telephone number +31 (0)13-5114420.

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