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SOME LEGAL ASPECTS OF HORSE OWNERS' LIABILITY



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Horse riding is a lovely activity. Sir Winston Churchill reportedly said once with regards to horses and horse riding; "No hour of life is wasted that is spent in the saddle." Certainly lots of our Horse International readers agree with this quote. The things may however change when something unpredictable happens to the rider in the saddle. In today's column we would like to review the situation wherein Churchill's saying does not apply that easily.

THE CASE

This review has been based on a case of a young Dutch rider for whom horse

riding was not such a pleasant experience in the end. From this case horse owners and riders can learn some important lessons. The case

headache to the owner. So it might be good to think about some precautions too. The case goes as follows: a fifteen year old girl who was experienced

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itself is based on a case judged by the District Court of Gelderland this year. One can imagine that in similar situation owning a horse may cause a

inriding ponies (from the Court information we learn that the girl itself was however reported to compete in pony classes), visited with her niece



The moment you put your foot in the stirrup, anything can happen.

(an experienced riding instructor) a trading stable to see two ponies which the niece wanted to buy. The girl was not interested in the ponies herself, she only accompanied her niece. At the stable, a rider presented the ponies to the niece. Subsequently, the niece went inside the stable's building to negotiate upon further details of the agreement etc. The girl remained outside. Once the deal was concluded, the niece came back. At a certain moment the niece asked the girl whether she would like to try one of the ponies herself.

STARTED LITIGATION

The instructor apparently explained to the girl that the pony had a good character but was rather sensitive. The instructor told her also to remove the spurs off her shoes that she was using earlier on the same morning. It was also reported that the pony was a relatively inexperienced docile saddle pony of four years and that the aids should be used with care. The pony was ridden with ease by a trainee of

the stable and stayed calm. The girl sat on the pony and the instructor had reportedly clearly explained the way of riding. Afterwards the girl initially walked on the lunge and trotted. Then the lunge went off. At a certain moment

‘You remain liable. Being liable is one thing, but limiting your liability is a different matter.’

the girl seems to have scared the pony by giving too much leg. The pony went faster and faster in trot and in contravention of the instructions the girl held the reins very tightly with her hands. The pony then went into a gallop. Out of the blue, the girl was – according to her own saying – “launched into the air” out of her saddle and fell to the ground. She suffered some fractures (a clavicle fracture and a hip fracture that was surgically

treated). Later the girl claimed to suffer from some long lasting injuries and she decided to start litigation against the owner of the pony at the moment of this accident.

THE CLAIM

The girl's lawyer based her claim on Article 6:179 of the Dutch Civil Code. This section provides that the possessor of an animal is liable for the damage caused by the animal, unless there would have been no liability if the possessor had had control over the behaviour of the animal which caused the damage. Regarding this provision it must be noted that on several occasions the Dutch Supreme Court considered, with regards to especially horses, that they are animals with their own internal energy and by their nature unpredictable. The rule of Article 6:179 DCC is de facto a strict liability under Dutch law. In other words you cannot escape from this liability and you cannot say you are not liable.

THE DEFENCE

Even though what has been stated about the strict liability is true, the stable's lawyer did try to escape it. He stated that the stable was not liable for the accident. He reported that on the barn's door a sign with the text affirmed; “We accept no liability for accidents in our paddock, pasture, stables and on the ground (or during their rides)”. However, the stable neither stated that the girl was in the barn, nor that the sign was readable elsewhere. The Court did not establish whether she saw the sign, but asked itself whether a fifteen-year-old girl could understand the meaning of such an exoneration. Anyhow, this defence was dismissed.

LIABILITY

Regarding the liability the stable put forward that it was not negligent and took due professional care, so that it was not liable. This defence was also dismissed by the Court, which stated that assuming liability in this case does not follow from negligence but is based on the strict liability of Article 6:179 DCC. The stable argued – referring to section 6:101 DCC – that its liability should be reduced by proportion to the degree in which the circumstances

which can be attributed to the girl contributed to the damage. In this sense, the girl had her own portion of liability for what happened. We hereby refer to the abovementioned description of the case. Following these circumstances the stable claimed that 33 percent of the damage should be attributed to the girl herself. The Court followed the stable in this reasoning, and established 33 percent liability to the girl. The stable remained liable for the remaining 67 percent.

IMPORTANT LESSONS TO LEARN

It is worth realizing that an owner of a horse – from a continental European law perspective – remains in principle liable for any damage caused by the animal. This liability is a so-called ‘strict liability’, and therefore a liability you cannot escape from and that you cannot contractually exclude. Talking about this strict liability based on the reviewed case, it is also pointless to try to exclude it. It happens very often that one wants to exclude the liability by waivers and general terms and conditions, but the result might be very contrary to what one envisaged. You remain liable. Being liable is one thing, but limiting your liability is a different matter. Therefore, it is advisable to limit your liability, by for instance indicating to which amount you are liable, etc. With regards thereto, it is also advisable to include your own liability insurance. Last but not least, do not forget to invoke relevant circumstances. A judge will be more likely to attribute a portion of the damage to an experienced rider (due to his knowledge, etc.) than to an inexperienced pupil.

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If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us by e-mail via info@europeanequinelawyers.com or telephone on +31-(0)135114420.

