



Sofia Schoultz v (1) Vicki Ball (2) Rosemary Gibson-Miller (t/a Surrey Grazing) (3) Ponniah Sabesan

Case Analysis: Lexis®PSL PI & Clinical Negligence (EXC0006012)

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S*choultz v Ball & Ors* is a claim under S2(2) of the Animals Act 1971 for damages for personal injuries caused by a horse loose on the highway failed against the owner of the horse because the claimant was unable to prove that the horse was displaying a dangerous characteristic at the time that injury was sustained.

With facts superficially similar to those in the leading case of [Mirvahedy v Henley](#) and another [2003] UKHL 16, the case is a salutary reminder that claimants must establish that the characteristic pleaded under S2(2)(b) was being displayed at the time the injury was caused and was causative of the damage.

It should not be assumed that liability will be established under the 1971 Act where an animal has escaped onto the highway and injury results.

What are the practical implications of this case?

Establishing strict liability under s2(2) of the Animals Act relies on a claimant proving each of the limbs under sections 2(2)(a) to (c). Underpinning this is the need to prove that the animal was displaying a dangerous characteristic under s2(2)(b) and that it was this characteristic that caused the damage.



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A panicked animal is potentially a dangerous animal if loose on the highway. Therefore, where there is direct evidence of a characteristic such as panic being displayed, or where it can readily be inferred (for example an animal having broken down fencing or a gate in fright), and injury resulted, claimants may well have a good case. However, where there is no such evidence, establishing strict liability under the section is likely to be challenging. Expert evidence on animal behaviour, if adduced, should be focused on the overt behavioural responses causing damage rather than theoretical physiological responses. Expert accident reconstruction evidence may help the parties understand the movement of an animal just prior to and at impact in the absence of (or to supplement) direct factual evidence.

In accidents involving animals on the highway, careful consideration needs to be given to the circumstances in which the animals came to be there and whether this can be linked to the pleaded characteristic. Where collisions and subsequent injury occur merely because of the presence of a large animal on the highway, liability is unlikely to be established under s2(2) unless the claimant can prove not only that its panic or flight response caused it to be present on the highway, but that the same behaviour was present at the time of injury

and was causative of it. Each case will turn on its own facts, but as a general rule it is not safe for claimants to assume that the Judge will accept that an animal stationary on the highway when hit by a vehicle is displaying momentary calm in an otherwise panic-filled episode.

This judgment may well encourage keepers of animals and their insurers to take a robust approach in defending claims under the Animals Act 1971 where there is a paucity of evidence as to the animal's behaviour before or at the time of the accident.

What was the background?

The Claimant sustained significant head and other injuries in a collision in the early hours of 16 December 2015 on an unlit section of the A3 between the taxi in which she was a passenger and a horse ("Lowri") owned by the First Defendant. Lowri and another horse, Mr. Fox, had escaped from grazing land occupied by the Second Defendant and had made their way onto the A3. Whilst there was some factual evidence as to the behaviour of the horses on their journey to the A3, there was no direct evidence as to the behaviour of Lowri just prior to the collision.

The Claimant's case was that the First Defendant was strictly liable for her injuries under S2(2) of the Animals Act 1971 in her capacity as the owner of the horse. Her claims against the occupier of the land where the horses were liveried (the Second Defendant), and the taxi driver (the Third Defendant) were resolved before trial. By her claim against the First Defendant, the Claimant alleged that the accident and her injuries were caused by characteristics of the horse which are not normally found in horses except at particular times or in particular circumstances, namely behaving unpredictably and "reacting with force" in circumstances where the horse was frightened/panicked, including by running when it encountered a perceived threat. She alleged that the Lowri was frightened/panicked by adverse stimuli which it perceived as threatening, causing both horses to escape from their field and travel along the highway onto the A3 where Lowri collided with the claimant's vehicle.

The First Defendant's case was that the horse was not displaying the pleaded characteristic at the time of the accident and that the likelihood of injury or of injury being severe were simply due to the size and weight of the horse, which were not characteristics within the meaning of s2(2)(b).

What did the court decide?

The Judge held that:

1. The horses likely left the field in search of fresh grazing by wandering over a section of collapsed fencing which had been installed inadequately, rather than because they had been frightened or chased or were responding to an unknown adverse stimulus (¶ 83-84). They were relaxed at this time, rather than in a flight response (¶ 87). The horses then travelled a significant distance along the B280, most likely in response to an adverse stimulus (¶ 89), but they were not in a panicked state when first seen by a passenger in a vehicle that followed and then overtook them (¶ 94). They trotted in a flight response to being herded by that car but were not frightened/panicked. This car turned away from the horses just before the access roundabout for the A3, and it was likely that the horses recovered from this adverse stimulus very quickly (¶ 104) and that they walked up the slip road of the A3.
2. There was no evidence of the behaviour of the horses immediately after they reached the A3, save that they must have travelled a short distance southbound to the point at which the collisions occurred. However, the Judge accepted the evidence of the First Defendant's accident reconstruction expert, Ms Evers, that Lowri was likely to have been standing still or barely moving at the time of the collision on the basis of the pattern of damage to the taxi and the post-collision position of the horse's body (¶ 129). In the absence of any evidence of anything happening to panic the horses after they got on to the A3, it was held Lowri was stationary and calm at the time of the collision. There was no evidence to justify a finding that the horse had been frightened/panicked but was only momentarily still at the point of impact (¶ 131). The horse would not have perceived the threat posed by the taxi, which was travelling at around 50mph, until it was

within 3-5m of her and in her 'flight zone', and this was too late for her to react to it before the collision.

3. In relation to s2(2)(a), the question of whether or not severe injury is likely/reasonably to be expected is a factual matter for determination by the court on the evidence before it. Neither the likelihood of injury, or the severity of it, should be assumed from the circumstances of the accident or the fact that the claimant did, in fact, suffer a severe injury (*Lynch v Ed Walker Racing Ltd* [2017] EWHC 2484 (QB), Langstaff J at [24]). These are matters which must be considered prospectively, not assumed with the benefit of hindsight. In making that determination, the court is entitled to rely on equine expert evidence (*Lynch v Ed Walker* at [55], [62]).
4. In relation to s2(2)(b):
 - a. For strict liability to attach to a keeper under the second limb of s2(2)(b), the animal must be shown to have a dangerous behavioural characteristic (although that may only be seen at particular times or in particular circumstances) and it is that dangerous characteristic which must be causative of the damage (*Curtis v Betts* [1990] 1 WLR 459 and *Mirvahedy v Henley* [2003] UKHL 16, ¶ 40, applied).
 - b. As to evidence of the behaviour of the animals, section 2 of the Animals Act is concerned with characteristics of the animal **which cause damage**, i.e. behavioural responses, not physiological processes such as increased heart-rate and sweating (¶ 92).
 - c. The Claimant had failed to establish that the horse was behaving unpredictably in circumstances where she was frightened/panicked (¶134). The likelihood of the damage to the Claimant, or of its being severe, was due to Lowri being a large and heavy animal who was standing on a dual carriageway where she should not have been standing rather than being due to any characteristic of the horse (¶135). Section 2(2)(b) of the Animals Act was not made out and that was fatal to the claim.
5. In those circumstances, it was not necessary for the Judge to consider 2(2)(a) or (c). Had it been

necessary, she would have found that both limbs of section 2(2)(a) had been met. She noted that section 2(2)(c) was the subject of admissions.

6. In conclusion, the facts as found were readily distinguishable from the case of *Mirvahedy* where liability under s.2(2)(b) had been established for horses escaping a field onto a highway and colliding with a car. In contrast to the present case, in *Mirvahedy* the horses' behaviour was of one of panic and unpredictability.



Case details

Court: King's Bench Division

Judge: HHJ Melissa Clarke (sitting as a High Court Judge)

Judgment: [Schoultz v Ball and others \[2022\] EWHC 2452 \(KB\)](#)

Find out more

This article was first published in Lexis®PSL PI & Clinical Negligence (EXC0006012) and was written by [Harriet Jerram](#), barrister at Outer Temple Chambers. Harriet successfully represented the First Defendant from 2018 to a High Court trial in June 2022, latterly being led by Nathan Tavares KC.

Harriet Jerram has specialised in clinical negligence and personal injury for over 20 years. Since starting in practice, Harriet has had a niche personal injury practice, specialising in Animals Act claims. She has particular experience of representing Defendants in equine cases, successfully defending dozens of cases at trial.

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