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EQUINE LAW

An introduction to aspects of law and taxation relating to horse, rider and the small equine business

Northern Ireland edition

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April 2014

'Let me ride through the wide open country that I love
Don't fence me in'

Cole Porter (1891 - 1964)

EQUINE LAW

An introduction to aspects of law and taxation which impact horse, rider and the small equine business

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April 2014

The law stated in these notes is the position, as I believe it to be, in April 2014. However, the law is complex and ever changing and the materials are intended as guidance only, originally to accompany a series of lectures and seminars. Compliance with the law remains the reader's responsibility and professional advice should be sought in the event of concerns over compliance or a legal dispute.

NB These notes relate to England and Wales. Although much of the material applies throughout the United Kingdom, those operating in Scotland or Northern Ireland will need to take local advice.

Northern Irish differences appears in boxes throughout the text but may not be comprehensive.

These notes follow the legal convention of using the male pronoun 'he' to refer to a person of either gender, other than where specific persons are referred to in case summaries. Thus 'he' and 'him' should be taken as meaning 'he or she' and 'him or her' throughout.

Due to the nature of the subject matter, the notes will be updated periodically, thus, comments, queries, corrections and suggestions for improvements to future editions are most welcome. Please send any such comments to the author :

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Buying and Selling

Buying and Selling

The sale and purchase of goods and services involves contract law. Though there are specific provisions applicable to certain areas, e.g. land, goods or hire purchase, the basic principles are the same whether purchasing £5 worth of hoof oil or a 30,000 guinea race horse.

Northern Ireland : most common law and legislation relating to contract applies in Northern Ireland.

What is a contract?

It is a legally binding agreement involving the exchange of something of value, e.g. money for goods or services. Lots of contracts are verbal, and only a few (e.g. certain dispositions of land) need to be in writing. Verbal contracts are normally just as binding as written ones although, obviously, evidence might be difficult, thus a written record is always advised where appropriate.

Sale and Purchase of Goods or Services

The Sale of Goods Act 1979 provides some extremely useful rights for purchasers of goods from **business** vendors and, conversely, will give your customers rights against you.

In a contract of sale there is an implied condition that **the seller has a right to sell the goods**. Thus if goods are stolen there can be no valid contract of sale. It is irrelevant that the vendor does not *know* the goods are stolen - the purchase has a right to the return of their money and the original owner has a right to their goods back (s.12).

Where there is a contract for the sale of goods by description, there is an implied term that **the goods will correspond with the description** (s.13). This would not apply if the horse or equipment was viewed and the descriptions easily checked by the buyer - say, a horse described as bay is clearly chestnut.

Where the seller sells goods in the course of business, there is an implied term that **the goods are of a satisfactory quality** (s.14). This is taken to mean that they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price, the fitness for all the purposes for which goods of the kind in question are commonly supplied, appearance and finish, freedom from defects (e.g. lameness or vices such as crib-biting, weaving or wind-sucking), safety and durability. In short, the item must not be faulty at the time of sale.

The law follows common sense (in this instance) in that there is no protection if the defect (a) has been specifically drawn to the buyer's attention before the contract is made, or (b) where the buyer examines the goods before the contract, which that

examination ought to reveal, or (c) in the case of a sale by sample, which would have been apparent on a reasonable examination of the sample.

Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known any particular purpose for which the goods are being bought, there is an implied condition that the goods are reasonably fit for that purpose.

The Supply of Goods and Services Act 1982 provides a similar range of implied terms relating to services, i.e. that work is of a satisfactory quality and, in the absence of alternative agreement, carried out within a reasonable time and for a reasonable price.

There is other relevant legislation (e.g. some expansion of remedies in the Sale and Supply of Goods to Consumers Regulations 2002), but the Sale of Goods Act and the Supply of Goods and Services Act provisions provide the backbone of contractual protection of which it is useful to be aware.

Private Sales

Where both parties are dealing as individuals, i.e. neither party is buying or selling in any way relating to a trade or business, then there is not the same protection as when buying from a trader. The principles of *caveat emptor* (let the buyer beware), or 'sold as seen', operate. You have no rights to expect goods to be of a satisfactory quality or fit for their purpose (s14 Sale of Goods Act) so you should check goods thoroughly before you buy them, and enlist expert advice if you have limited experience. However, the seller must still have a right to sell the goods (s12) and the goods must agree with their description (s13).

You still have rights where the vendor makes inaccurate statements on which you rely which may, at law, be contractual terms or representations (see below).

Consumer Contracts

Consumer contracts are, broadly speaking, where one party is selling 'in the course of business' and the other party is not, i.e. is normally a private individual. However, rather confusingly, a trader can be a consumer for these purposes if they are buying something unconnected with their business.

Consumer contracts are controlled by the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994 and the Sale and Supply of Goods to Consumers Regulations 2002) thus sections 12 - 15 apply and the seller cannot exclude their liability under these sections (Unfair Contract Terms Act 1977). See also the Consumer Protection from Unfair Trading Regulations 2008 which largely replaces earlier legislation such as the Trades Descriptions Act.

Business Contracts

Where both parties to the transaction are in business, e.g. you run a riding school and purchase a horse from a dealer, then the Sale of Goods Act and related provisions still apply but the vendor can exclude the operation of sections 13 - 15 'so far as is reasonable'. Liability under section 12 (the implied term that the seller has the right to sell the goods) cannot be excluded.

'In the course of business'

It is important to establish whether one or both parties are dealing 'in the course of business' in order to see the level of statutory protection available, i.e. whether a transaction is private, consumer or business. In many cases it will be obvious one way or the other. However, the courts have interpreted the phrase very widely. Indeed the 1979 Act used the phrase 'in the course of business' to replace the old word of 'dealing' (which had been used in the original Sale of Goods Act 1893) to deliberately widen the ambit. In *Stevenson v Rogers* [1999] it was held that a fisherman who normally held one boat at a time for his own use, and thus bought and sold the occasional boat but was clearly not 'dealing' in boats, was nevertheless selling a boat 'in the course of business' because the boat related to his actual business of fishing.

Misleading Prices

Businesses are not normally regulated as to what they charge for goods or services, but the price of goods should be accurately displayed in a shop, catalogue or advertisement (Consumer Protection from Unfair Trading Regulations 2008).

If goods are incorrectly priced, the trader cannot be forced to supply them at that price (based, technically, on the principle of invitation to treat as discussed below with relation to auctions). However, if sharp practice, rather than genuine error, is suspected the matter should be reported to the local Trading Standards Department for investigation. The local TSD can be found through the local authority.

Retailers should be aware of their obligations under the Price Marking Order 2004, a brief overview of which is available at (www.tradingstandards.gov.uk), which requires, among other things, that prices are to be clearly displayed.

Contractual Terms

In purchasing a horse you will obviously be entering a contract. The terms of that contract can be written, oral, implied by statute (such as the Sale of Goods Act 1979) and, possibly, a combination of all three. Should one of the terms be breached, the injured party may have a right to withdraw from the contract or to continue with the contract but obtain damages. This will depend on the status of the terms. This is a technical area but, broadly speaking, if the breach is of a serious nature (breach of condition) then the contract may be treated as ended and the injured party has no

further obligations. If the breach is of a minor nature (breach of warranty) then the injured party must still fulfil any remaining obligations (e.g. payment) but may sue for damages.

Many businesses deal under standard terms which need careful scrutiny. For example, leading horse dealers are in the process of setting up the British Equine Dealers Federation which will utilise standard terms and conditions for the sale of horses, backed by an independent ADR (alternative dispute resolution) scheme.

Warranties as to nature and quality of horse

Good practice for buyers :

- Ask the seller to confirm / warrant, in writing, that he will return the horse if it is not possessed of any specific, expressed characteristics. This would clearly indicate that such terms would be conditions rather than warranties.
- Get written contract with details of the parties, price and if the seller vouches for freedom from vice, behaviour in traffic, etc. get that included and ensure the contact is signed.
- Take a witness - regardless of the legal technicalities, it is often a matter of your word against theirs.
- Take a more experienced person with you if you are a novice (and be honest with yourself about this).
- Have a horse vetted and specify to the vet the nature of work you intend to do with the horse. Don't use the seller's vet - have a genuinely independent opinion.
- Ride the horse, watch it being ridden, look at catching, tacking up, stable handling, mounting, working in traffic, alone and with other horses.
- Have a week's trial if possible, arranging insurance beforehand.
- Never exaggerate your abilities and experience - it is simply dangerous.
- Always get passport.

There would be no liability under warranties if they state matters which would be obvious to the buyer : *Bailey v Merrell* (1616). However, if the buyer is not present and / or is clearly relying on the seller's warranty, or if the seller deliberately conceals an obvious defect, then there will be liability.

Good practice for sellers : The seller must be clear to limit the warranty to cover matters of which he is aware and to state the limits of his knowledge. If he gives a general warranty it will be no protection to state, after the event, that he did not know of a defect.

Be very wary of statements such as 'free of vice' - '100% in traffic' - 'easy to load'. Sellers should be open and honest - exaggeration may make for a faster sale

or a higher price but may well be more stressful and expensive when the buyer is unhappy with their purchase.

It is common to see warranties that a horse is sound and free from vice. Such issues will be findings of fact, ultimately for a court to decide. Broadly speaking, unsoundness relates to a horse's physical makeup and vices relate to temperament.

Coates v Stephens (1838)
If at the time of sale a horse has any disease or defect which actually diminishes, or in its ordinary progress will diminish, its normal usefulness, it is not sound.

The unsoundness need not be permanent - simply present at the time of sale (*Elfan v Brogden* (1815)).

Scholefield v Robb (1839)
A vice is a defect in the temper of the horse which makes it dangerous or diminishes its usefulness, or a bad habit which is injurious to its health.

Exclusion Clauses

There was originally a concept of freedom of contract, i.e. it was up to the parties to include whatever terms they wanted.

> *If there is one thing which more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting and their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice.*
>
> **Sir George Jessel, 1875**
> Master of the Rolls

Now, however, in order to protect persons entering contracts, in particular where there is unequal bargaining power, the law restricts contracts that seek to exclude liability. As with many aspects of law, there are many areas of contention here, such as whether a given clause has even been incorporated into the contract and, if so, precisely how the clause is to be interpreted in the event of ambiguity. For our purposes, however, the Unfair Contract Terms Act 1977 provides that :

- No one can exclude liability for death or personal injury resulting from their negligence.
- No one can exclude the operation of s12 (right to sell goods) of the Sale of Goods Act.
- In a consumer contract (i.e. one party in business, the other being a private party), the operation of ss13 - 15 of the Sale of Goods Act cannot be excluded.
- In a business contract (i.e. both parties in business), liability can only be excluded so far as is reasonable.

Misrepresentation and Mistake

Misrepresentation occurs where one party to the contract is induced to enter the contract by a statement of fact made by the other party, the statement being untrue.

Clear statements made prior to the sale may well be taken as representations on which the buyer us entitled to rely. In *Scott v Steel* (1857) a horse dealer stated that the horse was steady in harness and quiet to ride. The buyer was entitled to return the horse and have his money back when the animal clearly had neither of those qualities.

Rather more recently! in *McCrickard v Roberts* (2006) in the County Court a claimant who found that a horse was unsuitable, to the point of being dangerous, succeeded in a case for misrepresentation. Although eventually succeeding, the stress of lengthy court proceedings for the claimant, and the considerable expense for the defendant clearly illustrate the benefits of (a) not misstating a horse's characteristics, and (b) that simply agreeing to take a horse back from a dissatisfied customer will, long term, very often be the preferable policy.

Misrepresentation may be fraudulent, negligent or innocent. The contract is voidable by the innocent party (i.e. they can choose whether or not to carry on with the contract), and they will be able to claim damages where misrepresentation is fraudulent or negligent (Misrepresentation Act 1967).

Liability for misrepresentation can only be excluded so far as is reasonable (Unfair Contract Terms Act 1977, Misrepresentation Act 1967) - in practice, such exclusion is unlikely to be valid.

Northern Ireland : see the Misrepresentation Act (Northern Ireland) 1967, the provisions of which are similar.

The law surrounding the different forms of mistake is complex beyond the scope of these notes. Suffice is to say that certain mistakes are such as to render the agreement to contract meaningless and the contract will be void, whereas other mistakes are not so deemed and the contract will stand. Again, advice will be sought if a contract is entered which transpires to be substantially different in some way to that which one of the parties intended. It must be noted that avoiding a contract on the grounds of mistake is rare.

A case in this area involved a race horse trainer and was heard, at first instance, in Epsom County Court : in *Smith v Hughes* (1871) the plaintiff farmer sold oats to the defendant trainer. D wanted old oats (as new green oats can give racehorses colic) but got new oats. The case itself had problems with basic evidence (there were doubts as to whether the word 'old' was ever actually stipulated), however, it was set out that an objective view of matters will be taken and if one party *knows* the other enters the contract under a fundamental mistake then it will be void. A mistake as to the *quality* of goods will not be enough to set a contract aside. It must be such that there was never any real agreement between the parties.

Agency

It may be that in purchasing a horse you are not dealing with the horse's owner, not because of foul play but because a dealer, assistant, groom or some other representative of the owner is acting on their behalf. At law, they are known as the agent (with the owner being the principal) and they bind the owner in contract and it is the owner who is liable for any breach.

If the agent has the owner's full permission (authority) then there are no complications. However, the problems arise when the agent has no authority or exceeds his authority. Is the owner still liable? Can the agent be made personally liable? The rather unsatisfactory answer is : it depends. This is a complicated area which will require advice but a crucial issue is whether the third party would reasonably assume that the agent had the principal's authority, e.g. in purchasing from a dealer's yard one is aware that one is not talking face to face with the owner and it is reasonable to assume that a horse dealer, or his assistant, has authority to act. Conversely, it is not reasonable to assume that a young groom in a private yard has authority to sell : *Brady v Todd* (1861).

Trade Descriptions - Consumer Protection from Unfair Trading Regulations 2008

These regulations applies only to those who sell in the course of business, i.e. horse dealers, saddlers and those selling any other equipment. They replace much previous legislation (including most of the Trades Descriptions Act, and apply throughout the UK including Northern Irelnad.

It is a criminal offence to apply a false description to goods. As well as contractual redress, misleading trade descriptions should be referred to the local Trading Standards Institute which can be found through www.gov.uk/find-local-trading-standards-office.

Minors

It is incorrect to state, as it sometimes is, that minors (those aged under 18 years) cannot enter contracts. However, most contracts cannot be enforced against the minor although the other party will be bound. Under the Minors' Contracts Act 1987 the minor who has, for instance, purchased a horse and failed to pay for it, will be enforced to return the animal. Contracts regarding land, e.g. where a minor rents grazing, are in the special category of being voidable - i.e the contract will be binding unless the minor withdraws from it before (or within a reasonable time of) reaching majority. Under normal circumstances, the parents of the minor will not be bound in any way.

The simplest advice would be not to buy from or sell to minors and do not rely on any warranties made by minors. In short, deal with adults.

Proof of Ownership

As protection when buying, selling, against theft and to aid insurance it is good practice to :

- mark horses with freeze marking, branded hooves or microchips
- retain identifying photos and videos
- retain copy of passport when loaning (original to go with horse)
- update papers as horse grows or alters colour
- engraving tack and irons as practical
- paint postcode or other ID on roof of trailers

EU provisions on compulsory micro-chipping take effect from January 2007. It has long been compulsory in some EU countries (such as France) and has been in the UK for thoroughbreds, under Weatherbys requirements, since 1999.

Vetting and Veterinary Work

In private sales (as opposed to purchasing from a dealer, where the purchaser will have the protection of the implied terms of the Sales of Goods Act), where the seller is reluctant to give warranties as to the horse's condition and quality it is very much a case of *caveat emptor* - let the buyer beware. It is, then, good and common practice to have a horse vetted. The liability then falls upon the vet under normal contractual principles (failing to carry out work of a satisfactory standard in a contract for the provision of services under the Supply of Goods and Services Act 1982) or for professional negligence, should the veterinary certificate turn out to be inaccurate due to lack of reasonable care.

Five stage vetting should be requested which will include :

- preliminary examination
- trot up
- strenuous exercise
- rest and second trot up
- hoof inspection.

'Reasonable care', in the context of negligence, is judged objectively in terms of the standards expected of a reasonably competent member of the profession (*Bolan v Friern Hospital Management Committee* [1957]). It is no excuse for a vet to say he is newly qualified and inexperienced or rarely works with horses but neither is the standard of the best horse vet in Britain expected, simply a 'reasonable' level of professional competence. Not fully checking the appropriateness of steroid treatment and not discussing the potential risks of steroids with the horse owner resulted in a £350,000 damages award for negligence against two vets, when an international dressage mare had to be destroyed as a result of their treatment (*McGarel-Groves v Glyn and Grandiere* (2005)). The increasing values of competition, racing and stud horses only point towards an increase in such claims.

One is sometimes presented with a veterinary certificate obtained by the seller. There

is a more limited recourse by the purchaser in this instance as he will have no contractual relationship with the vet (who was commissioned by the seller). He will only be able to sue for negligence if the vet was aware, at the time of vetting, that the buyer would be relying on it in determining whether or not to purchase the horse.

Deciding what does, or does not, constitute professional negligence is far from an exact science and the fact that one vet disagrees with another does not mean that one is wrong and certainly not that one is negligent, so long as both opinions are within the realms of reasonableness : *Calver v Westwood Veterinary Grou*p [2000].

Both the importance of a written record (rather than imparting information verbally) and the scope for professional differences of opinion can be seen in *Blass v Randall* [2008] where a vet failed to note in her Pre-Purchase Examination report that a horse had undergone surgery which would preclude its eligibility for dressage under international rules (*Federation Equestre Internationale*), thus devaluing it by around £40,000. Ultimately, the vet was found not to have been negligence

Complaints and concerns regarding veterinary services should be reported to the Royal College of Veterinary Surgeons (www.rcvs.org.uk) who have a formal investigation and disciplinary procedure under the Veterinary Surgeons Act 1966.

There is a move to allow trained lay people to carry out more straightforward treatments which have hitherto been done by vets or with no regulation at all.

For the changes to **equine dentistry**, see p. 22 below.

To order to regulate unqualified persons carrying out the procedure, **artificial insemination** can now (as of July 2004) be carried out by anyone over the age of 18 who has been on the Defra approved course and gained their Certificate of Exemption - under the Veterinary Surgeons (Artificial Insemination of Mares) Order 2004.

Note that the Veterinary Surgeons Act 1966 is the governing legislation of the veterinary profession. Following consultation, there has been reform of investigative and disciplinary matters (SI 2013, no. 103, in force from April 2013).

Auctions

Technically speaking, goods on display at an auction, be that a Ming vase being held up by a porter or a horse being led round the ring by a groom, are an invitation to treat - a pre-contractual step which binds no one. The bidder, waving their catalogue or giving a surreptitious wink, makes an offer. It is then open to the auctioneer to accept or reject that offer.

A few key points are worth noting :

- once the gavel falls and the offer has been accepted, both parties are bound - thus it is imperative that as much information is obtained and examination made prior to bidding

- auctioneers normally have no powers of warranty and thus their unauthorised statements will not bind the seller : *Payne v Lord Beaconsfield* (1882) - however, statements of fact in the catalogue will probably amount to warranties : *Gee v Lucas* (1867)
- oral statements made at the sale may override written statements in the catalogue, particularly in response to specific questions *:* *Couchman v Hill* [1947]

In the event of a dispute, check the auction catalogue for an arbitration clause to see whether a specific procedure is provided for. In the absence of any such clause, auctions are, of course, dealing in contractual matters thus advice should be sought from Trading Standards Departments and dispute resolution methods as for contract should be explored.

It is also likely that auctions are being conducted by members of a professional body such as the Royal Institution of Chartered Surveyors (www.rics.org.uk), who have their own dispute resolution scheme.

Trial periods

Although trial periods are often agreed, there is no contractual right to return a horse and get a full refund unless there has been a breach of contract (such as an incorrect description). If, as sometimes occurs with dealers, you get them to sell the horse on for you rather than demanding an immediate refund, remember that you are the owner and that the new purchaser will have rights against you and not the dealer.

If you do arrange a trial period, even if only for a day or two, be sure that you have the appropriate insurance in place

Tack

Consumers are protected as to quality and title under the Sale of Goods Act 1979 and as to description under the same Act and the Consumer Protection … Regulations 2008.

Badly fitted saddles can cause injury to the horse and, ultimately, injury to rider. Saddle fitters are governed by the Society of Master Saddlers with mandatory bi-annual refresher courses and annual re-registration, ensuring professional standards. There may be a remedy available for breach of contract (implied terms of reasonable skill and care under the Supply of Goods and Services Act 1982) or under negligence principles of reasonable competence.

Defective work is a contractual matter under the Sale of Goods Act 1979 and / or Supply of Goods and Services Act 1982. In addition, concerns about skill and workmanship might be discussed with the Society of Master Saddlers (www.saddlersco.co.uk) who aim to safeguard the quality of work, training and qualifications of saddlers and saddle fitters. The Society maintain professional standards with the designation SMS Qualified Saddle Fitter status, with the

requirement of regular refresher courses. They have recently also introduced a foundation level Qualified Saddle Fitter aimed at other professionals such as vets, physiotherapists, farriers, Fellows and Instructors of the British Horse Society to further improve understanding and a holistic approach.

Trailers and boxes

If a vehicle is stolen, regardless of the fact that you purchased in good faith, the original owner has the right to the vehicle and, although you have Sale of Goods Act rights for breach of contract against the person who sold to you, you may well have difficulty in getting your money back. There are, therefore, some advisable precautions :

- As with cars, the AA, the RAC and some specialist insurance brokers will carry out horsebox provenance checks.

- Ensure that lorry engine and chassis numbers match - a basic precaution although, of course, villains will often ensure they match anyway.

For additional points on the use of vehicles see p. 57 below.

Farriers

Northern Ireland : the following legislation regarding farriers in not applicable in Northern Ireland. There are, however, moves towards more regulation in the province.

The Farriers (Registration) Act 1975, as amended by the Farriers (Registration) (Amendment) Act 1977, requires the registration of persons engaged in farriery and the shoeing of horses and prohibits the shoeing of horses by unqualified persons. It is a criminal offence for any person to shoe a horse (including their own) or otherwise engage in farriery in England and Wales, whilst not registered on the Register of Farriers and to do so may render that person liable to prosecution, the conviction of which carries a fine of up to £1,000. From 30th March 2007, the customary exemption from Farriers' Registration Council registration in parts of the Scottish highlands and islands was removed - all must now register.

Note : despite the seriousness of this matter, hence the need for statutory regulation, recent prosecutions have resulted in very low fines : *Farriers Regulation Council v McMahn* (2007) - £250, *Farriers Regulation Council v Cannon* (2007) - £150.

The Council is responsible for the annual registration of all farriers and once registered each farrier receives confirmation by way of a badge showing the current year. The Worshipful Company of Farriers, a City Livery Company which has its origins in 1356, is the examining body (www.wcf.org.uk).

The National Association of Farriers, Blacksmiths and Agricultural Engineers (www.nafbae.org) was formed in 1905 to protect and develop the interests of its members, encouraging improved standards of workmanship, thus being beneficial to all tradesmen, their employees and customers. The Association aims to bring together farriers, veterinary surgeons, horse owners and horse related organisations at special events, such as lectures, seminars and meetings, providing information and a wider understanding thus forming a good base for working relationships.

Defective farriery work is a contractual matter with rights afforded under the Sale of Goods Act 1979 (as amended) and the Supply of Goods and Services Act 1982. However, complaints should be reported to the Farriers' Registration Council (www.farrier-reg.gov.uk). A booklet is available explaining the procedure : *Making a Complaint to the Farriers Registration Council*. In addition The Worshipful Company of Farriers (www.wcf.org.uk) has its own disciplinary procedures.

Dentistry

Currently, the Veterinary Surgeons Act 1966 specifies equine dental treatment that can be carried out by lay people (Category 1 work) and that which must be done by a qualified veterinary surgeon (Category 2 and 3 work). Defra are proposing an Exemption Order to allow Category 2 work to be carried out by non-vets who have attended an approved course. Category 3 work will continue to need a vet.

Equine dentists (other than vets) are not currently under any mandatory regulation although the British Association of Equine Dental Technicians seeks to regulate the profession and a list of members, training programmes and standards can be obtained from their website (www.equinedentistry.org.uk) .

Category 1 work (permitted to be carried out by lay people) includes :
- examination of teeth
- routine rasping (*not* with power tools)
- removal of sharp points and over growths of less than 5mm.

Category 2 work (to be de-regulated under the new proposals) includes :
- most extractions
- removal of sharp points and over growths of more than 5mm.

Category 3 work (which will continue to require a vet) includes :
- most treatments requiring incisions
- root canal work
- repair on mandibular fractures

Insurance

Insurance is mentioned throughout these notes but it might be useful to have a summary section with some of the main points. The two big questions with insurance are (a) that insurance is in place, and (b) that it is valid and will offer the expected protection in the event of a claim.

The first of these issues is relatively simple to deal with. Individuals, businesses and event organizers will be aware of the need to insure and they will have more or less choice depending on the nature of the insurance required. For private owners there are a range of options. For equine businesses there are now just a few specialist firms offering cover. Obtaining a range of quotations and careful consideration of the cover needed is no more than common sense. A pitfall to avoid is lack of cover where a horse on trial, when newly purchased or on loan.

Whether insurance is going to offer protection will be a matter of ensuring that one buys the correct cover and, importantly, ensuring that the terms have been complied with. Insurance contracts are, in legal terms, contracts of the utmost good faith - *uberrimae fidei*. This means that the insured is under a duty not only to answer direct questions accurately but also to disclose every fact or circumstance which may influence the insurer in taking on the contract or in deciding the premium (*Rozanes v Bowen* (1928)). Should there have been incomplete or inaccurate disclosure the policy will be unenforceable, even where the non-disclosure was not pertinent to the accident / loss in question.

Policies may also be invalidated where working practices are below standard. For example, ensure full compliance with health and safety provisions and the employment of suitably competent staff.

The increase in litigation from injured parties, particularly in riding schools, and the high cost of insurance led Alun Michael, the Minister for the Horse to chair a meeting in July 2004 with representatives from Defra, the Association of British Riding Schools, the BHS and the Association of British Insurers (with representatives from the three main equine insurance companies). This resulted in the setting up of a working party to look at ways to alleviate risk. Two preliminary pieces of advice to riding schools having been :

- Ensure a proper system of paperwork is in place, notably :
  - written evaluation of the characteristics and suitable use of each horse
  - risk assessments
  - clear and full accident reports
  - notes on rider assertions as to their own competence

- Evaluate new clients' ability. Riders (and the parents of young riders) are well known to exaggerate their experience and it is the responsibility of the yard to match horses and riders.

- Use suitably experienced helpers - it may be that children under 16 year old help out but if below school leaving age they need a permit from the local authority, even if unpaid. Having unregistered children working in a yard may well invalidate insurance.

Although insurance premiums and litigious clients are not going to go away, the Working Party concluded that there was clear scope for the equine industry to help by addressing working practices and by the recognition and management of risk.

Internet Sales

The purchase of horses, unseen, from the internet is apparently, if unbelievably, on the increase. Although there will be contractual protection under the usual provisions and through terms stipulated by site providers, the main problems in this area arise from law enforcement rather than strict rights. As a forum for seeing what is available the internet is invaluable but to purchase unseen would require *caveat emptor* - 'let the buyer beware' - to be writ large. In addition to the usual contract law provisions, internet sales by *business* (but not private) vendors are governed by Consumer Protection (Distance Selling) Regulations 2000 which, among other things, normally gives a 7 day cooling off period. See the Trading Standards 'distance selling hub' for further information : http://dshub.tradingstandards.gov.uk.

Contractual Dispute Resolution

You have tried to assert your rights with the seller but they keep arguing.

'It isn't our fault the goods are defective – you must go to the manufacturer.'
Wrong! You bought the goods from the trader, not the manufacturer, and the trader is liable for any breaches of contract.

'You only have rights for 30 days after purchase.'
Not true - depending on circumstances you can refer back to the shop within a reasonable time. You are not, of course, entitled to anything if you simply change your mind.

'I didn't know there was a problem.'
Fault or knowledge on the part of the vendor is irrelevant. Rights are against the seller and it is for them to go back to who they purchased from and on down the line to the manufacturer.

'We don't give refunds at all - you must accept a credit note.'
Again, it depends on why you want to return the goods. If you have changed your mind, the seller doesn't have to do anything. If the goods are faulty, incorrectly described or not fit for their normal purpose, you are entitled to your money back (provided you act within a reasonable time), and you certainly do not have to accept a credit note.

The law treats failure to meet Sale of Goods Act or Supply of Goods and Services Act obligations as a breach of contract and if satisfaction cannot be gained amicably then consumers are entitled to seek redress through the civil courts. As explained above, rights will depend on the status of the parties, i.e. private individuals or in business.

It is, of course, always preferable to reach agreement out of court but, if necessary, the money claims procedure (for contract claims up to £100,000; £1,500 for personal injury) is relatively easy to use without the need for legal assistance (see www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingDebt/Makingacourtclaimformoney/index.htm).

Preliminary advice might be obtained from the Trading Standards Institute (http://www.tradingstandards.gov.uk/).

Contracts in certain subject areas will be dealt with elsewhere, e.g. employment contracts (Employment Tribunal - www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/employment/index.htm).

Membership of certain bodies gives access to their own advice and arbitration services, for example the British Equestrian Trade Association (www.beta-uk.org) can deal with consumer and customer disputes.

Loans

A verbal contract isn't worth the paper it's written on.

Samuel Goldwyn (1882 - 1974)

Whether loaning out your horse or having use of a horse on loan, written agreements are strongly advised. This will, among other things, establish that the arrangement is, indeed, a loan rather than a gift. Also avoid any exchange of monies, other than expenses, to ensure that the transaction is not misinterpreted - inadvertently or otherwise - as a sale or purchase.

Where the *is* to be a fee the arrangement is normally called a 'lease'. Written terms along similar lines to a loan should be drawn up.

A solicitor will be able to draw up a loan agreement but there are good drafts available on the British Horse Society website (www.bhs.org.uk) or, for members, from the Country Land and Business Association (www.cla.org.uk) or NFU Countryside (www.nfucountryside.org.uk) . An example is appended to these notes.

Typical and important issues to be covered would include :

- **Status of arrangement**. A clear stipulation that the arrangement is loan only.
- **Description**. Of horse, tack and any other accompanying equipment.
- **Period of loan.** This may be fixed, renewable or for a specific purpose, e.g. to bring on a horse for a specific event. There may be a preliminary probationary period.
- **Notice period.** Period required of either side and whether to be oral or written, with a provision for immediate termination of the agreement in the event of cruelty or neglect.
- **Premises.** Where is horse to be kept and must loanee notify loaner if horse is moved?
- **Expenses.** Stipulate all matters : feed, worming, farrier, transport, vaccinations, vet's fees, insurance, competition entry, tack repairs and replacement, etc.
- **Named experts.** You might wish to specify the name of the farrier and / or vet you wish to be used.
- **Tack**. Schedule of tack accompanying the horse.
- **Insurance.** If you are the owner, your insurers will want to know that the horse is on loan and probably want a copy of the agreement - given loanee a copy of the agreement and include a clause that they comply with terms. If you are the loanee, taking out your own insurance might be prudent.
- **Extent of loanee's authority.** E.g. to make veterinary decisions.

- **Purpose of loan.** E.g. is loanee to ride, school, compete, hunt, etc.?
- **Showing**. Who is entitled to prize money? How many shows can be entered? Under whose name will horse be entered?
- **Specific terms.** E.g. loanee prohibited from using harsh measures such as gag snaffle or spurs conversely only to use accompanying tack or like replacements.
- **Permitted riders.** This may be a specified person(s) or stipulated to be at the loanee's discretion
- **Exclusion of liability.** Stipulate that loanee inspects and rides horse before taking it on and that faults and vices have been disclosed. One cannot (per Unfair Contract Terms Act 1977) exclude liability for death or personal injury due to negligence, but the above stipulations may serve to negate negligence.
- **Level of loaner / loanee interaction.** In general it is reasonable that the owner checks on the horse periodically but the loanee will be entitled to 'quiet enjoyment'. Should the owner want a considerable level of control or to ride the horse with any regularity then a share agreement would be more appropriate.
- **Breeding**. Can the horse be used for breeding and what are to be the arrangements if a mare has a foal?
- **Sale.** It would not be uncommon for loanee to have first refusal should the loaner decide to sell. Is price to be stated now or at the time of sale?
- **Arbitration clause.** Arbitration is far cheaper and far more likely to result in a satisfactory continuing relationship in the event of a dispute than legal action. A clause agreeing to refer to, say, a specified Fellow of the British Horse Society (with their prior agreement), should be included.

Livery

As with loans, it is important that livery arrangements are formalised with a written agreement. This ensures that each party is certain precisely what is expected in a range of areas, many of which will mirror the loan agreement. Importantly, it will set out :

- stable management (e.g. mucking out, feeding, turning out, bedding, etc.)
- arrangements for expenditure, e.g. farriers,
- facilities available, possibly at extra cost (e.g. arena, lunging, show preparation)
- veterinary requirements
- insurance
- provisions for emergency treatment
- removal of horse by the owner
- terms for the termination of the agreement
- arbitration

An example agreement is included at the back of these notes.

Horse Passports

Northern Ireland : the relevant passport legislation is the Horse Passports Regulations (Northern Ireland) 2004, operative from 10th January 2005. See www.dardni.gov.uk/pr2005/pr050230.htm for further information.

The Horse Passports Regulations 2009 requires all owners of horses, ponies, donkeys, mules and zebra in England and Wales to apply for a horse passport, if not already in possession of one. Since 28th February 2005 animals without one cannot be bought, sold, exported or moved for competition, show or breeding.

Applications must be made to Passport Issuing Organisations. The BHS issue passports for equines of unknown breeding, otherwise the breed society should be contacted. Many breed societies, of course, already had a passport system in place although many still need to be reapplied for as the old version did not contain the veterinary pages. Issuing bodies can be found at www.gov.uk/government/collections/horse-passport-issuing-organisations.

The passport will have a description of the horse, a veterinary verified silhouette and all inoculation and veterinary records need to be recorded.

Foals must get a passports and be micro-chipped before they are 6 months old or 31st December in the year of birth, which ever is the later, but this must be done if they are to be sold or leave their premises of birth.

Horses should be accompanied by its passport in the following circumstances :

- When moved into or out of Great Britain;
- When moved to other premises for competition purposes;
- When moved to the premises of a new keeper;
- When moved to a slaughterhouse for slaughter;
- When moved for the purpose of sale; or
- When moved to a new premises for breeding purposes

In short**, the passport accompanies the horse**. It would be prudent for the owner to retain a photocopy if not staying with the horse, e.g. when it goes on loan. A copy would be prudent in any situation as, if the original is lost, it will make it easier to obtain a duplicate.

Note that contravention of the Regulations is a criminal matter subject to up to 3 months imprisonment or a £5,000 fine.

Full, regularly updated, details are available at www.gov.uk/horse-passport and the BHS site (www.bhs.org.uk).

The main purpose of the system is to prevent horses entering the food chain if they have been administered medicines un-authorised for food use.

Horse Keeping

Grazing

Northern Ireland : technically, grazing licences for less than a year are known as 'agistment', with the term 'conacre' relating to less than one year lettings for arable purposes, although in practice most grazing agreements in Northern Ireland are referred to as 'conacre'.

Lease / licence

Rental agreements for land or buildings may give rise to a lease. Such law is outside the scope of this session. However, a typical agreement to have horses or, indeed, other livestock, graze land for a specified period, perhaps up to a year but often just the grazing season of April to October, will be, at law, a licence rather than a lease.

A licence gives no legal interest in the land (unlike a lease or, of course, the freehold).

The giver of the licence can revoke it at any time or, at the end of a specified period, decline to renew. Remaining on the land when the licence has been withdrawn or has otherwise come to an end would be trespass.

The grazier has no protection under agricultural tenancy legislation : *Watts v Yeend* [1987].

Crucial to an agreement being a licence rather than a lease is that there must be *no* rights of exclusive possession by the grazier.

As with many equestrian arrangements, such matters are very often dealt with informally, possibly with no more monetary implication than a bottle of Scotch at Christmas. However, to give protection and peace of mind to both landowner and grazier, a simple written agreement is advised in order that issues are anticipated and clarified to avoid potential unpleasantness at a later stage.

An example is to be found at the end of these notes.

If moving into a new property, it is prudent to check whether there are any existing grazing agreements giving third parties the right to remain on the property.

Ragwort

Northern Ireland : The ragwort legislation does not apply. Unreasonable levels of ragwort on another's land in Northern Ireland could only be dealt with through the common law of negligence or nuisance but it is a noxious weed under Noxious Weeds (Northern Ireland) Order 1977, along with thistle (*Cirsium vulgare* and *Cirsium arvense*), dock (*Rumex obtusifolius* and *Rumex crispus*) and wild oat (*Avena fatua* and *Avena ludoviciana*).

Under the Ragwort Control Act 2003 a code of practice, *How to Prevent the Spread of Ragwort*, was prepared with considerable input from the BHS to assist land managers in developing a strategic and cost-effective approach to controlling the spread of common ragwort (*Senecio jacobaea*) - an 'injurious weed' under the Weeds Act 1959, with the aim of striking a balance between protecting animal welfare and safeguarding biodiversity. The code was launched in 2004 and can be viewed at the government website : www.gov.uk/government/publications/code-of-practice-on-how-to-prevent-the-spread-of-ragwort.

In 2005, a supplementary publication was produced : *Guidance on the Disposal Options for Common Ragwort* - www.gov.uk/government/uploads/system/uploads/attachment_data/file/141779/pb11050-ragwort-dispose-110315.pdf.

There are, of course, other varieties of ragwort and other species which are similarly toxic to horses and which will require control. The other weeds which might require action under the Weeds Act are :

broad-leaved dock (*Rumex obtusifolius*)
curled dock (*Rumex crispus*)
field thistle (*Cirsium arvense*)
spear thistle (*Cirsium vulgare*)

Own ragwort management

All horse carers should be vigilant from an animal welfare perspective and those with care of others' horses, e.g. at livery, will also need to be aware of their potential liability in negligence should grazing land be poorly managed.

The Code of Practice on How to Prevent the Spread of Ragwort details good practice for owners of livestock and owners / occupiers of land. It calls for regular inspection, moving livestock where necessary and explains the various control methods available, their effectiveness, frequency necessary and other matters, such as the period which animals need to be kept off following treatment. Methods vary from pulling and cutting through to various forms of herbicide.

Concern about ragwort on other land

Concerns about uncontrolled ragwort should first be raised with the owner or occupier of land. If they cannot be identified or no improvement ensues then the local DEFRA Rural Development Service Office should be notified. See list of *Useful Contacts* at the back of these notes for the office dealing with your area.

The Code of Practice includes a useful list of likely owners of various categories of land such as waterways, railways and nature reserves.

Note - although prosecutions under the Ragwort Control Act (or the preceding Weeds Act) are extremely rare, *Horse Law* recently listed a prosecution resulting in 200 hours of Community Service on guilty plea (*R v John James* (2006)) and enforcement notices have certainly increased.

Muck Heaps

Northern Ireland : The following legislation is largely inapplicable in Northern Ireland. Pollution of water is an offence under the Water (Northern Ireland) Order 1999, subject to a maximum £20,000 fine. Further information is available on www.dardni.gov.uk and www.ruralni.gov.uk - the government site for farm and countryside management.

See www.dardni.gov.uk/cogap for the 2008 Code of Good Agricultural Practice for the prevention of pollution of water, air and soil (currently being updated).

Waste disposal and control of run off into water courses is governed, depending on the circumstances, by the Environment Protection Act 1990, the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2007 (which replaced the Waste Management Licensing Regulations 1994 and the Pollution Prevention and Control Regulations 2000).

Run off from muck heaps must not enter water courses. Breach of these provisions is a criminal offence subject to a fine of up to £20,000 or imprisonment. It is not necessary to *intend* pollution or even to know about it, simply to 'cause' (or 'knowingly permit'). Discharge consents are technically available from the Environmental Agency but are largely impractical for our purposes due to the treatment requirements.

The Environment Agency (www.environment-agency.gov.uk) recommends that field heaps are at least 10m from water courses and 50m from wells or boreholes which supply water for human consumption or dairy use.

Permanent stores should have an impermeable, probably concrete, base that slopes so that run off can be collected in a sealed underground tank, or sloping to the back in the absence of a sealed tank. Solid sides will prevent contamination of adjacent land.

Most private owners are exempt from Waste Management Regulations. However, if manure is on commercial premises and is to be discarded then it is classed as 'industrial' waste, comes under the Regulations and must be removed by licensed removers.

Under the Waste Management Licensing (England and Wales) (Amendment and Related Provisions) Regulations 2005, from 1st July 2005 on site composting of more than 5 tonnes / year will require the construction of impermeable concrete pads beneath muck heaps and a charge will be levied (< £500 per year, maximum), depending on tonnage. However, this does not apply to simply keeping a muck heap or spreading on your own land, only to those who actively compost the waste, i.e. by add something to it, such as green waste or food waste.

In brief :

Private Compost at home in properly constructed store and use resulting manure on own land after safe period (a year or so is recommended for the destruction of all harmful larvae).

Commercial Use a registered waste contractor for removal. Those on farm land will need further advice. If actively composting more than 5 tonnes per year, charges will be incurred.

Muck heaps are potentially dangerous and care should be taken that people dealing with them use safe procedures, and that children are not climbing on them, remembering that there may be a duty of care owed to trespassers, not just lawful visitors, under occupiers' liability provisions.

Although only their schemes only operate for yards in Surrey, the website of the Surrey Council Horse Pasture Management Project is worth a visit for further information :

www.surreycc.gov.uk/sccwebsite/sccwspages.nsf/LookupWebPagesByTITLE_RTF/About+the+Horse+Pasture+Management+Project?opendocument

Straying

A common concern among horse owners and carers, and all too real for those who have woken in the early hours to a violent knocking of the door, be it to round up a donkey nibbling a neighbour's shrubs or a string of polo ponies cantering down the village high street : straying livestock. Apart from the worry of injury to one's own animals, what is the potential liability to others. In short, at worst - what could it cost?

The relevant law varies according to the precise circumstances and, needless to say, if this situation happened and resulted in a claim for personal injury or damage to property then legal advice would be sought right away. These notes will, however, serve to acquaint the reader with the main legal provisions which may be operative.

It must be said that in recent years the horse owner has not been well served by the courts and the House of Lords decision in *Mirvahedy v Henley* [2003], where horse owners were found liable for a fatal accident caused by their stray horse even though it was acknowledged that there had been no level of negligence, will be examined.

Northern Ireland : Note that the Animals Act 1971 does not apply but is largely replicated by the Animals (Northern Ireland) Order 1976.

Straying from private land onto private land

It is your responsibility to fence animals in, not for others to fence them out. Interestingly, the USA has different rules for different states - eastern states follow our duty to fence in with the western prairie states, such as Montana and The Dakotas, having a duty to fence out.

If the horses cause damage by escaping through poorly maintained fences then one would be liable under normal negligence principles, i.e. there having been a breach of duty of care by the defendant resulting in damage to the claimant.

There would also be liability under s.4 Animals Act 1971. The Animals Act refers to 'livestock' which (per s.11) as well as horses, includes cattle, asses, mules, hinnies, sheep, pigs, goats, poultry and farmed deer. The important point to make is that (in contrast with negligence) certain Animals Act liability is strict, i.e. there is no need to prove fault. The only defence would be if the claimant caused the damage.

Note that the liability is incurred by the person in 'possession' of the animals, not simply the owner, thus livery horses will be in the yard proprietor’s possession.

Straying from private land onto the highway

Under s8(1) Animals Act if livestock escapes onto the highway there is normally only

liability if there has been a lack of duty of care, i.e. there is an element of fault.

However, s.2(2) indicates that there will be strict, no fault liability in certain circumstances, as explored in the following case.

Mirvahedy v Henley **[2003]**

A horse and two ponies owned, and kept in a field abutting their house, by Dr Andrew and Mrs Susan Henley were spooked one night by an unknown cause, escaped from their field and made their way onto a dual carriageway, the A380 in Devon. The horse caused serious injuries to Hossain Mirvahedy by crashing into his car. The horse and one of the ponies both died in the *melee*, the other pony being caught and collected the next day by its owners.

Mr Mirvahedy brought an action in negligence and under s.2 of the Animals Act. It was clearly established that there had been no negligence on the part of the owners - the fences (post and barbed wire + electric fence) were well maintained and adequate for their purpose.

s.2 Animals Act explained :

All animals are categorised as dangerous or not.

A dangerous animal, per s.6(2) is one that :

(a) is of a species (inc., per s.11, sub-species or variety) not commonly domesticated in the British isles, ***and***
(b) has such characteristics that is likely, unless restrained, to cause severe damage or that any damage caused is likely to be severe.

Per s.2(1) there is strict liability for any damage caused by dangerous animals, regardless of lack of fault.

Horses are not, then, categorised as 'dangerous' because they do not fulfil requirement (a).

s.2(2) considers liability for damage caused by those *not* of a dangerous species. It states that there will be strict, no fault liability where :

- the likelihood of damage, *or*
- the likelihood of damage being severe

was due to characteristics of the animal :

(a) which are not normally found in animals of the same species (i.e.. the animal is unusually aggressive highly strung - such a horse which bolts at agricultural machinery - *Flack v Hudson* [2001], or *Wallace v Newton* [1982] where a difficult horse badly injured a groom trying to box it

(b) are not so found except at particular times or in particular circumstances (e.g. a bitch being fierce only when with pups - *Barnes v Lucille Limited* [1907])

The accident was caused by a characteristic which wasn't due to atypical characteristics of the animal in question, thus not within part (a). It was, however, within the realms of normality in particular circumstances (within part (b) above), i.e. when panicked.

The leading judgments noted the difficulties over the construction and interpretation of the statute but viewed the role of the courts to interpret with issues of policy and the weighing of the interests of claimants and those who keep animals being a matter for Parliament.

Two of the five judges dissented, feeling that a literal interpretation of s.2(2)(b) would always result in strict liability in the face of damage because the most 'normal' of animals had the potential to cause damage in 'particular' circumstances. However, Lord Nicholls gave the example of a cow stumbling onto someone where the damage would be caused simply by the cow's size and weight and not 'characteristics apparent in particular circumstances'.

Summary:

There will be strict liability for damage caused by an animals in one's care where :

- where the animal is of a 'dangerous' species (unless damage was caused by claimant, per s.5) (s.2(1) Animals Act 1971)
- where animal is of a non-dangerous species and it is of a particularly vicious or dangerous disposition (s.2(2)(a) Animals Act 1971) - note that it must be the particular nature of characteristics which will be relevant - *per Glanville v Sutton & Co. Limited* [1928] - a horse's tendency to bite other horses was not relevant to its biting the plaintiff.
- where animal is of a non-dangerous species, is of a normal disposition, but is likely to cause damage at certain times or in particular circumstances (s.2(2)(b) Animals Act 1971), e.g. with young, guarding property or when spooked.

Note may also be made of *Wilson v Donaldson* [2004] where a farmer was found liable in negligence when cattle strayed from his well fenced field (through which there was a public footpath), through another landowner's dilapidated gates and onto the highway. The Court of Appeal indicated that as Mr Wilson knew (a) of his neighbour's neglected gates, and (b) that walkers *might* leave his gates open (although they had not in the previous 36 years!), then he should have made a risk assessment and taken precautionary measures to reduce the likelihood of gates being left open, such as self shutting gates, kissing gates or stiles (notwithstanding the fact that putting a stile where one is not designated can lead to prosecution for obstruction if done without permission (Highways Act 1980, s137) and is contrary to the policy under the Disability Discrimination Act 1995 and the Countryside and Rights of Way Act 2000 of increasing, rather than diminishing, accessibility.

Life after *Mirvahedy* : In 2006 a case was heard in the County Court (*Clark v Bowlt*) and the rider was found strictly liable under the Animals Act per the reasoning in *Mirvahedy*, when their horse veered into a slow moving car on a public highway. There was an appeal and in the Court of Appeal it was held that the rider was not liable. It was established that there had been no negligence on either the part of the car driver or the rider. The Court of Appeal held that the horse did nothing unusual for its species, i.e. showed no dangerous propensities. Neither did it show characteristics of 'particular circumstances'. The horse, in going against its rider's direction and veering into the road, simply acted in a way which anyone who knows horses would accept is normal - that they usually follow the rider's instruction but not always. Lord Justice Sedley stressed that : 'Section 2(2) is not intended to render the keepers of domesticated animals routinely liable for damage which results from characteristics common to the species. It requires something particular, and there was nothing of the specified kind to render the keeper liable here.'

This case does not overrule *Mirvahedy* where the horses bolted 'in particular circumstances'. What it does do is indicate that common sense will be applied to the Animals Act and that one will not be liable for every accident.

In 2007 we have, however, seen s2(2) Animals Act liability in *Welsh v Stokes* (see below).

Straying from the highway onto private land

Under s.5(5) Animals Act, if the livestock are lawfully on the road, e.g. driven animals being moved, then there will only be liability for damage if there is an element of fault, i.e. negligence : *Tillett v Ward* (1882). In *Fardon v Harcourt-Rivington* [1932] the common law was set out as '... the ordinary duty of a person to take care ... that his animal ... is not put to such use as is likely to injure his neighbour.'

In the absence of Animals Act liability or lack of care to justify an action in negligence, the landowner could resort to trespass (*Matthews v Wicks* [1987]) as one may be liable for the straying of livestock over which one has some control (as opposed to wildlife or cats and the like) onto the land of another : see *League Against Cruel Sports v Scott and others* [1985] where the MFH was liable for trespassing hounds.

Accidents

Where personal injury involves horses (or other animals) there could be claims in :

- negligence (requiring a level of culpability)
- Animals Act (which may, depending on the circumstances, be successful with *no* fault or lack of care
- Occupiers' Liability Act (requiring a lack of care)

There follows a précis of some cases brought in the event of injury caused by animals for an illustration of how the laws operate and interact. Some of these cases are mentioned elsewhere in the book but it might prove helpful to review this group together.

Northern Ireland : as before, the references in the following cases to negligence, nuisance or trespass are directly applicable to Northern Ireland. Animals Act references are not applicable although are largely replicated under the Animals (Northern Ireland) Order 1976.

Barnes v Lucille **(1907)**
High Court, KBD
A normally docile bitch was fierce when with pups - an example of the operation of the second part of s.2(2) (b) Animals Act - characteristics not normally found in animals of the species except at particular times or in particular circumstances.

Bativala v West **[1970]**
High Court, QBD
A riding school proprietor was liable, in negligence, for a pony which bolted during a gymkhana without being properly saddled up.

Bodey v Hall **[2011]**
High Court, QBD
The claimant was thrown out of trap drawn by the defendant's pony. When the pony shot forward, on being startled, it was said to be within s2(2) (a) and (b) of the Animals Act *but*, as the claimant was an experienced horsewoman, the s5(2) defence (that the risk was understood and voluntarily undertaken) applied.

Breedon v Lampard **[1985]**
Court of Appeal
The defendant's horse kicked out at a meet. It was reasoned that if *all* horses would behave in a certain way in given circumstances (horse approached too fast / too close from behind) then the behaviour cannot be abnormal and the judge was loath to find liability for 'normal' behaviour'. I.e. the horse was not an unusually dangerous animal within the first part of s.2(2) (b). However, this construction was not followed in *Mirvahedy v Henley*.

Burrow v Commissioner of Police for the Metropolis **[2004]**
High Court, QBD
The rider (a mounted policeman), rather than the owner / employer, was found to be responsible for his own injuries under s.5(1) Animals Act. The police officer suffered catastrophic injuries, physical and psychological, when he was thrown from the horse whilst on duty. However, he had been displaying a lack of control in having loose

reins held in one hand in wet conditions on a horse which was known to be a handful, and he was smoking.

Clark v Bowlt **[2006]**
Court of Appeal
A rider was held to be not liable where her horse veered into a passing car. The accident was the result of normal behaviour and the horses size and weight and not any unusual characteristics or circumstances thus Animals Act liability was not found. There was no negligence by either the rider or car driver.

Cunningham v Whelan **(1917)**
Ireland
Cattle obstructing a public highway were held to constitute a nuisance.

Cummins v Granger **[1977]**
Court of Appeal
A case famous for Lord Denning's alliterative 'bar maid badly bitten by a big dog' where an untrained German Shepherd guard dog, in a scrap yard, fulfilled s.2(2) (a) Animals Act, damage was *likely* to be severe, it being a large, powerful dog. S. 2(2) (b) was satisfied in that the dog was not known to be dangerous but would be so when defending its territory, i.e. displaying characteristics which were not normally found in the species except at particular times or in particular circumstances. In fact, there was no liability as the victim was a trespasser to whom, per s.5(3), there is normally no duty owed.

Curtis v Betts **[1990]**
Court of Appeal
The owner of a dog was liable when it bit the claimant. A bull mastiff attacked girl in the street, following its instinct to guard its territory. Per s.2(2) (a) Animals Act, damage was *likely* to be severe, it being a large, powerful dog. S. 2(2) (b) the fact that other animals would behave in the same way does not preclude liability (contrast *Breedon* and *Gloster*) - 'not normally so found except at particular times …' means - in extracting the double negative : *are* normally found at particular times.

Draper v. Hodder **[1972]**
Court of Appeal
To find liability in negligence there must be foreseeability of damage, even if the full extent or type of damage is not foreseen. In *Draper* the Courts approached this issue by asking whether the particular harm suffered was within *the range of likely consequences*, rather than whether the particular type of physical harm actually suffered ought reasonably to have been anticipated. The example given in that case was that if a herd of horses were released into a field during a school picnic and children were bitten, it was no defence to say that it could have been anticipated that a child might be trampled on, but not bitten.

***Elliott v Townfoot Stables* (2003)**
Newcastle County Court
An eight year old, Emma Elliott, was thrown from her pony in her third riding lesson. There were three heads of claim : (i) in negligence, (ii) for breach of duty of care under the Occupiers' Liability Act 1957 claim and (iii) under s.2(2) Animals Act 1971.

The negligence and OLA claims failed - as a matter of fact it was found that the lesson was properly conducted and supervised and that the pony was suitable for a child of Emma's age and (lack of) experience. The pony was normally reliable and safe.

The Animals Act s.2(2) - this section is cumulative :
(a) the damage is of a kind which the animal was likely to cause, unless restrained, *or* which, if caused, was likely to be severe *and*
(b) the likelihood of the damage being severe was due to abnormal characteristics of the animal *or* not normally found in the species except at particular times or in particular circumstances *and*
(c) the keeper knows of those characteristics.

The case failed as it was found by the court that the damage was not of a kind *likely* to be caused (being a generally placid animal in a closely supervised lesson) and, if damage in fact was to take place it was not *likely* to be severe. *Actual* damage was not relevant - it was the likelihood of the severity of damage which was in point.

The animal owner / keeper was not liable for damaged caused.

***Farndon v Harcourt-Rivington* [1932]**
House of Lords
This case underlined the common law duty to take care that animals to not endanger the public : 'the ordinary duty of a person to take care … that his animal or chattel is not put to such a use as is likely to injure his neighbour – the ordinary duty to take care.'

***Flack v Hudson* [2000]**
Court of Appeal
The keeper of an animal sued the owner. It was held that nothing in s.6(3) precludes this. The claimant sued under the Fatal Accidents Act 1976 as his wife was killed in the riding accident in question. The claimant's wife was riding the defendant's horse which was found to be unusually frightened by farm vehicles, i.e. a dangerous animal within s.2(2) (b).

***Freeman v High Park Farm* [2008]**
Court of Appeal
An experienced adult was thrown from an admittedly sprightly 15.3 7 year old chestnut mare which threw a couple of big bucks when going into a canter. The claimant could not establish Animals Act liability either at first instance or on appeal.

There is an interesting Animals Act analysis by the appeal court judge and an acceptance, regardless of whether liability could be established under s. 2(2), that an experienced rider voluntarily assumed the risk of damage in going for the hack, i.e. was precluded from claim under s. 5(2).

Gloster v Chief Commissioner of Greater Manchester Police **[2000]**
Court of Appeal
A policeman was bitten by a police dog. The claim failed on the *Breedon v Lampard* construction of not ascribing liability to animals behaving 'normally' for their species, albeit in particular circumstances. As with *Breedon*, this case owes more to judges looking to what they think Parliament was *trying* to do, rather than applying precisely what Parliament said. *Mirvahedy* has clearly overruled *Breedon* and *Gloster* although the dissenting judgments were loath to ascribe liability for, essentially, normal behaviour. Note Lord Slynn's delightfully opaque sentence : 'I do not think the words used are intended to convert what is normal in abnormal circumstances to being abnormal in those circumstances because it would be abnormal in normal circumstances.'

Goldsmith v Patchcott **[2012]**
Court of Appeal
A horse owner was not liable when a rider, who described herself as experienced, was injured when trying a horse prior to purchase. An Animals Act s2 claim was brought but horse was not previously known to be dangerous and it was held that the rider voluntarily undertook the risks, i.e. the section 5 defence operated.

Gwilliam v West Hertfordshire Hospitals NHS Trust **[2002]**
Court of Appeal
There is a duty on the land owner / occupier to take steps, so far as is reasonably practicable, to ensure that sub-contractors, event organisers, etc. have adequate public liability insurance. Asking questions of reputable persons / organisations should be enough to discharge this duty. In normal circumstances, it would not be expected that insurance papers would be asked for in evidence.

Haimes v Watson **[1981]**
Court of Appeal
Mr Haimes was riding his horse along the near side of a country road when the defendant began to overtake. The horse moved into the path of the car and there was an accident. It was accepted that riders cannot be completely sure how a horse will behave and drivers must be aware of this unpredictability. There is no absolute duty on the rider of a horse, riding properly on the highway, to prevent it going out of control.

***Hole v Ross Skinner* [2003]**
Court of Appeal
A driver, 28 year old Brian Hole, was badly injured when he collided with loose horses on the highway. The horses were on Harry Ross-Skinner's land but were dealt with by Mr Ross-Skinner's wife and her livery business partner. Mr Ross-Skinner had no input into the business. The claim was under s.2(2) Animals Act and in negligence. Strict liability under the Animals Act was conceded, in the light of *Mirvahedy v Henley* - the animals were behaving normally for their species in abnormal circumstances, i.e. bolting when frightened. The claim in negligence failed on the facts.

The concern in this case was that the defendant was merely the land owner. He was found to be the keeper, for Animals Act purposes, following the line of cases stemming from *M'Kone v Wood* (1831), through to *Flack v Hudson* [2001], such that a keeper can be someone merely allowing an animal onto his premises, with no sense of real control. - the courts extrapolating control of animals from control of land.

***Howard v Bergin, O'Connor & Co.* [1925]**
Irish Supreme Court
Bullocks were particularly boisterous on unloading from a railway carriage - an example of the operation of the second part of s.2(2) (b) Animals Act - characteristics not normally found in animals of the species except at particular times or in particular circumstances.

***Hughes v Rosser* (2008)**
County Court
An experienced groom (and BHS AI pupil) was kicked in the head after falling, whilst leading a horse. Her hat fell off during the accident. There was held to be no negligence but strict, Animals Act, liability on the part of the livery yard owner. The case included a useful review of the operation of s.2(2) liability.

***Hunt v Wallis* (1991)**
Queen's Bench Division
Compare animals of the same breed / type / sub-species or variety - not animals of a species (e.g. dogs or horses) in general. The dog in this case was a border collie.

***Kozlowska v Judi Thurloe Sports Horses* [2012]**
Court of Appeal
A groom working at a Yorkshire competition yard, Marta Kozlowska, was told to ride a 10 year old cob. She swapped horses on took a 7 year old thoroughbred called Double, against her employer's express instructions. The horse slipped and she broke her ankle in trying to quickly jump down from the horse. She claimed she should have been better supervised. She succeeded in the County Court but the Court of Appeal found for her employer. She had been correctly assessed, given adequate instructions and consciously disobeyed those instructions. It was held that employees have a level of responsibility to look after themselves.

***Livingstone v Armstrong* (2003)**
Newcastle County Court
The claimant hit a cow on the public highway. There was no negligence found in terms of fencing, etc. Regarding the Animals Act, the cow was not displaying any particular characteristics, either as a dangerous individual cow, or under abnormal circumstances, e.g. when frightened (per *Mirvahedy*). It was simply standing still in the road. The potential danger due simply to the large size and weight of an animal does not constitute 'particular circumstances'. Thus there was no Animals Act liability either.

***MacClancy v Carenza* [2007]**
Queen's Bench Division
The 45 year old claimant (variously described as a 'competent' or 'intermediate' rider, although not highly 'experienced') was injured during a riding lesson, falling after apparently hitting her head on a branch whilst going over a drop jump. The instructor was *not* found to be liable. A favourable, common sense view of negligence was taken, the court observed that 'riding … is not risk free' and that : 'Riders do sometimes fall from horses, even during riding lessons, it does not follow that the reason for their fall can always be identified, still less that the riding instructor is to blame.'

***McGregor v LMRS Farm Limited* [2007]**
Outer House, Court of Session
D was injured during a group riding lesson (her 10th lesson). There had been discussion about whether D was ready to go up to the next level of lesson (more cantering). It was decided to put her up, and onto a different horse. The horse in question was normally only used in the advanced class and the proprietor said, after the accident : 'Sorry … maybe I shouldn't have put you on Suchard.' Matching horse and rider was stressed as being of supreme importance (per BHS Training Manual p 45). It was stressed that if no suitable horse is available, commercial pressure should not colour decision. However, on the balance of the evidence from the riding school proprietor, the instructor, witnesses and an expert witness for the claimant, there was found to be no error of judgment in the matching of horse and rider, and thus no negligence. The expert for the claimant admitted that any expert's evidence could be countered by someone with direct experience of a given horse over time, which an examination by an in-coming expert could not provide

***McKenny v Foster* [2008]**
Court of Appeal
A passenger (the claimant's partner) was killed when their car collided with the defendant's cow. A claim in negligence and Animals Act failed at first instance. The appeal was based solely on an Animals Act claim. The cow, a Limousin cross, escaped from a field which was within a short distance of her 6 month old calf. She was in calf again. Evidence is that she 'jumped or scrambled over' a six barred livestock gate of solid construction and 'in this realm of wholly imprabable behaviour … either tip-toed across the centre of the [cattle] grid or jumped its entire length.'

The appeal failed as this behaviour was neither usual in cows in general, usual in particular circumstances or usual to this particular cow.

Plum v Berry and Berry (T/A Chorley Equestrian Centre) **(2004)**
Preston County Court
An experienced rider was bucked off whilst on a hack on a riding school horse. There was considerable doubt about the claimant's evidence in this case but, in applying the Animals Act the court referred to *Elliot v Townfoot Stables* and concluded that the damage was not, on the balance of probabilities, per s.2(2) (a) *likely* to be severe : '…there are many accidents caused when people fall off a horse in a trot or a slow canter or even slightly faster when no severe damage at all occurs.' The judge highlighted Lord Scott's point in made in *Mirvahedy v Henley* where he noted that one could trip over a dormouse and break one's neck, but that it was not *likely* that an encounter with a dormouse would lead to *severe* damage. Also, the case was said to fall within s.5(2), i.e. the accident was '… precisely the …type of risk which a rider undertakes.'

This latter point would seem to give hope to defendants in riding school situations but see the following case :

Puzey v Wellow Trekking **[2005]**
Bristol County Court
An experienced rider fell whilst out on a group hack from a riding centre. The group were cantering through a field with hay bales when the claimant's horse shied. The group was being escorted by an unpaid rider who worked around the yard in return for free rides.

1. Was the unpaid escort an employee? On normal principles of employment law looking at a range of factors surrounding the control of the person's activities, it was found that he could *not* be regarded as an employee.

2. Per s.2(2) (a) - the damage when an adult falls from a large horse travelling at speed 'might well be' severe. Contrast *Elliott v Townfoot* where a child fell from a small horse under close supervision in a school.

3. s.2(2) (b) was clearly fulfilled under the *Mirvahedy* construction - it is normal equine behaviour for a horse to shy when frightened.

4. A defence under s.5(2) was *not* made out - the ride was not found to be within the generally accepted risks of riding. The judge took a very narrow view of this defence, requiring clear evidence of specific agreement to the risks of cantering through the field.

Quinn v Bradbury and Bradbury **[2012]**
High Court of Ireland
Robin Quinn, an experienced horseman working in stud / training yard sustained injuries when the horse he was riding spooked. He was riding Gary, a six year old gelding how had previously spooked in the same area. The injuries are likely to have life-long implications as he has lost ability to ride at professional level. It was held that instruction should not have been given by employer to take same route, without

some precaution and Mr Quinn was awarded €126,000(after a 30% deduction for contributory negligence).

***Reid v Equiworld Club Ltd* (2010)**
Aberdeen Sheriff Court
Vicky Reid was an experience rider and a member of the Robert Gordon University show-jumping team. She claimed that the horse she was riding, a 16.2 dark bay gelding called Roma, bucked at jump due to injury previously sustained by slipping on ice, and that Equiworld were negligent. On the facts, the injury to horse doubted, or doubted as to extent. The duties of care of the riding club with regard to the fitness of its horses were clear and included:

- the duty to maintain their horses in good health
- the duty to instruct any necessary veterinary and physiotherapy treatment
- the duty to assess fitness to jump before any session.

It was held that none of these duties had been breach and it is likely that the buck was due to 'rider error' and her excessive use of the whip (which she had been expressly told not to use on this particular horse), and lack of a 'proper hold' on the reins.

***Smith v Ainger* (1990)**
Court of Appeal
The keeper of a dog (Sam) with known tendencies to attack other dogs was liable for the personal injuries sustained by the owner of a dog which it attacked. In construing s.2(2) (a) of the Animals Act it was suggested that 'likely' could mean :
'probable'
'more probable than not'
'such as might happen'
'such as well might happen'
'there is a material risk that it will happen'
The latter two constructions were favoured, i.e. more than simply 'it *might* happen' but less than 'more probable than not'.

Regarding the second arm of s.2(2) (a) - was the damage likely to be severe? It was found that Sam was clearly likely to attack other dogs he encountered. If he attacked them when they were on a lead then the owner of the attacked dog was likely to be hurt and, given that Sam was a large dog, the damage was 'likely' to be, although not necessarily, severe.

***Turner v. Coates* [1917]**
King's Bench Division
The owner of an unbroken colt was liable in negligence for driving the animal along the highway in the dark where it became frightened by the light from a bicycle and injured the cyclist, on the same common law duty of care basis as was highlighted in *Farndon v Harcourt-Rivington* [1932].

Turnbull v Warrener **[2012]**
Court of Appeal
Ms T and Mrs W were both experiences horsewomen. Ms T regularly rode Mrs W's horse, Gem, particularly after Mrs W became pregnant. She rode with a bitless bridle due to Gem's recent dental work. After trying this in a school without any problems, she took the horse for a canter in an open field where the horse threw her. She failed on her claim negligence and under Animals Act 1971. The section 5 defence operated and she was said to have voluntarily accepted the risk.

Wallace v Newton **[1982]**
Queen's Bench Division
The owners of a horse were liable with reference to the first part of s.2(2) (b) - a horse was known to be difficult and a groom was severely injured trying to box it.

Walsh v Connolly and McCauley **[2006]**
Queen's Bench Division, Northern Ireland
An unqualified (not unusual and not unlawful in Northern Ireland) farrier casually employed an assistant (an experienced stable lad and jockey), who was kicked in the head when clenching (knocking the nails in) a shoe fitted by the farrier. Claims were made of negligence on the part of the farrier, and negligence, occupiers' liability and Animals Order (Northern Ireland) 1976 (NI equivalent to the Animals Act 1971) on the part of the yard owner/horse keeper. On appeal the yard owner was not liable on any grounds. Horses kicking when shoed was not found to be normal behaviour for horses in those particular circumstances (unlike, e.g. bolting when spooked). There was also found not to be an automatic assumption of owners staying to supervise or hold the horses.

Welsh v Stokes **[2007]**
Court of Appeal
When a 17 year old trainee was injured on the highway when the horse she was exercising reared and fell back onto her, the yard was held liability under s2(2) Animals Act. They were not negligent. It was held that although the horse had not behaved in this was before, and that it was not 'normal' in the sense of 'usual' for horses to rear when unwilling to go forward (they are more likely to run away), such behaviour was 'normal' in the sense of a something that any horse would be 'capable' of doing - 'it is within a horse' normal range of behaviour'. A side issue in this case was the weight given to hearsay evidence, without which the circumstances of the accident would have been unknown. The evidence of an unknown person given verbally at the time of the accident was allowed under the Civil Evidence Act 1995.

Wilkinson v Beeley **(2003)**
Crewe County Court
A horse ridden by an experienced 76 year old lady was frightened and attempted to jump a car. It was established that the rider was not negligent but there was strict liability under s.2(2) - horses have a tendency to bolt when frightened i.e. normal characteristics for the species in abnormal circumstances.

Wilson v Donaldson **[2004]**
Court of Appeal
Cattle strayed from a field onto the public highway causing a traffic accident. Between the field and the road was another, badly maintained, field owned by a third party. The cattle strayed from Mr Wilson's farm due to a gate being left open by walkers on a public footpath running across the field. A claim was made in negligence.

The fields were well fenced and the cattle regularly checked, i.e. livestock management was without fault. The court held, however, that as the farmer (a National Trust tenant) knew the neighbour's field was poorly fenced and of the risk that the public might leave a gate open - despite evidence that walkers had not done so in the previous 36 years - then it was negligent not to take precautionary measures in the form of stiles and / or self-shutting gates. It may be noted that locking gates and providing stiles would be in contravention of the access policy under the Disability Discrimination Act 1995 (now Equality Act 2010) and the Countryside and Rights of Way Act 2000, which the court appeared to ignore. The North York National Park Guide (the farm being in that area) states : "… we aim to improve the quality of the public path network by removing barriers where possible. Replacing a still with a gate will make it easier for a growing number of people with knee or hip problems to enjoy a walk.'

Animal Welfare

Doubtless, basic tenets of animal welfare are unnecessary for the reader. However, it might prove useful to be aware of the main legal provisions in this area (both statutory and common law), the penalties available and what to do if one becomes aware of a welfare or cruelty issue.

Northern Ireland : none of the legislation listed below under 'Statutory provisions' is applicable in the province. The main Northern Irish provision is the Welfare of Animals Act (Northern Ireland) 2011, the terms of which are very similar to the Animal Welfare Act.

Causing unnecessary suffering to animals under is a criminal offence subject to fines, imprisonment and disqualification from keeping animals or running a riding establishment. It is important to note that for most offences under the statutes it is not necessary to prove wilfulness or fault, merely that pain and suffering, to the extent of cruelty, have been caused.

What is cruelty? *Budge v Parsons* (1863) - unnecessary abuse, *Barnard v Evans* [1925] - causing unnecessary suffering. There are also a string of offences elaborating on cruelty in s1(1) of the 1911 Act.

The Animal Welfare Act 2006 became operative in April 2007 (with certain statutory exclusions such as animal experiments under the Animals (Scientific Procedures) Act 1986, the destruction of animals for food (subject to minimum standards of treatment) and hunting. The purpose of the Act was :

- to consolidate existing legislation - some dating back to the early 20th century
- to allow action for lack of care, short of existing cruelty
- to extend police and council inspectors' powers (not ILPH or RSPCA Inspectors)
- to facilitate secondary legislation and codes of practice in specific areas, including :
    - fighting and the rearing of sporting game
    - circuses
    - tail docking
    - greyhound racing
    - livery yard licensing

Offences under the Act carry a maximum sentence - 51 weeks (and / or £20,000) and it applies to all vertebrates (other than man!).

Under s 4(1) it is a criminal offence to cause an animal to suffer or (s4(2)) to allow an animal for which one is responsible for to be caused to suffer by another.

Previous provisions are extended such that the police or inspectors may step in if they 'reasonably believe' an animals is suffering - s.18(1) - and can take the animal into

possession if a vet certifies that it is 'likely to suffer if its circumstances do not change' - s18(5).

s19(1) gives the police (and local authority inspectors) powers of entry where there is reasonable belief of suffering or likelihood of suffering if the circumstances do not change - these powers do not extend to private dwellings - s19(2).

s24 amends s17(1)(c) of the Police and Criminal Evidence Act 1984 to include powers of entry for the purposes of arrest in respect of the prevention of harm to animals under the Animal Welfare Act. Powers of seizure are normally only exercised under a vet's certificate - s18(5) - but can be without if the circumstances dictate - s18(6). On seizure, arrangements must be made for care at a place of safety - s18(8).

The Act give increased powers of destruction which, again, would normally be under a vet's certificate where it is in the animal's interest - s18(3) - however, the police and local authority inspectors now have the power to authorise and/or carry out destruction if the circumstances dictate - s18(4).

Equine Industry Welfare Guidelines Compendium for Horses, Ponies and Donkeys

In March 2002 a code of practice, the Equine Industry Welfare Guidelines Compendium for Horses, Ponies and Donkeys, was launched by Defra, in consultation with all the main equine industry representative bodies. The guidelines seek '... to promote sound welfare and management practices and contains recommendations to assist horse owners, keepers and others to achieve high standards of animal welfare.' The third edition was released in 2009. As a code of practice, the guidelines do not have the force of law but breach could well bring the offender within existing provisions of negligence or the Animal Welfare Act. There are a rather daunting 379 points of practice supported by an extremely useful range of supporting references and appendices such as guidance on the Carroll and Huntington method of body condition scoring and detailed guidelines on vaccination (for tetanus, equine flu, equine herpes virus (EHV), equine viral arteritis (EVA) and strangles).

The Guidelines can be accessed at :
www.newc.co.uk/wp-content/uploads/2011/10/Equine-Brochure-09.pdf

Negligence

In addition to the statutory provisions, such as those outlined above, many of which give rise to criminal liabilities, there is a common law duty to take reasonable care whether one owns an animal, cares for it at livery or is simply riding it or leading it for a few minutes, i.e. at any point of contact. Negligence is a civil matter which will result in damages being paid to those who have suffered physical or psychological damage or damage to their property.

Agricultural Animals

It may be noted that there are welfare codes for farm animals from which horses are normally excluded (notably the Welfare of Farmed Animals (England) Regulations 2000 and 2007). However, largely as a point of interest rather than much practical application, horses specifically kept for food production or horses working in farming or forestry, come under those regulations.

Northern Ireland : see the Welfare of Farmed Animals Regulations (Northern Ireland) 2012.

Welfare Dispute Resolution

These are largely criminal issues and concerns can be reported to the police. The RSPCA or other welfare bodies such as the World Horse Welfare (formerly the ILPH) might also be called. It might be noted that, unlike the police, the RSCPA have no specific powers of entry or arrest and RSPCA officers should leave premises if asked to do so. In serious cases RSPCA will seek police accompaniment.

The most well regulated yards can find themselves the subject of a cruelty action due to the vigilant public who might, for example, see a sick horse or one which has been recently rescued for rehabilitation. If such an action needs defending then specialist lawyers can be found through the Animal and Equine Lawyers Association or The Law Society.

Query

Where an animal is in one's care, whether one is the owner or not, there is clearly a responsibility to feed, water and keep the animal in accordance with the provisions of welfare law.

The question has been posed as to what the duty is if an abandoned animal is 'left' at premises simply because a field and / or stable is available. There have been anecdotal cases of the police finding stray animals and leaving them at the nearest 'willing' yard they could find. On the spur of the moment the yard owner might say 'yes' with little thought as to the consequences.

As tracing an owner may take time and reasonable precautions must be so taken before allowing the animal to be sold, what duty is the inadvertent new keeper under? Can they truly be said to be responsible for the animal?

The author would welcome comments, answers or anecdotes on this matter - contact cdesilva@harper-adams.ac.uk.

Riding on the Road

Northern Ireland : note that the Highways Act 1980 and the Road Traffic Act 1988 are largely inapplicable. Road traffic legislation in the province is contained in the Roads Act 1920, Road Traffic (Northern Ireland) Orders 1981, Roads Order 1993 and Road Traffic Order 1995.1997 and 2007.

Horses and other animals are referred to in the Highway Code with paragraphs 139, 190 and 191 instructing motorists on how to drive near riders and paragraphs 35 and 36 instructing riders to be safe, visible and as in control as possible. It is and offence (s72 of the Highways Act 1835) to ride on the pavement or footpath.

There are no laws about riding two abreast - it is simply a matter of commonsense and safety and riding in an unnecessarily unsafe manner will be negligence, regardless of any operative criminal provisions.

The BHS recommend that there are certainly no more than two abreast and no more than eight in a group with experienced riders aged over 16 years at front and back. They have a number of leaflets available free of charge and *Road Sense* is available online at www.bhs.org.uk/Safety/safe_riding.htm.

If you have a lot of horses being ridden on the road then ask the local authority to put up a warning horse and rider triangle road sign.

There is no mandatory requirement to wear a hard hat but failure to do so will, in the event of your being hurt in an accident caused by someone else's negligence, result in a substantial decrease in your compensation under the principle of contributory negligence. The British Horse Society (www.bhs.org.uk) can advise, train and test on riding and road safety and produce a free leaflet, *Road Sense for Riders*, in addition to the *Riding and Roadcraft* book.

As well as the general negligence provisions requiring that one takes due care in riding and dealing with horses, whether on the road or anywhere else, there are various antiquated but still operative offences. The author has a particularly soft spot for s35 of the Offences Against the Person Act 1861 (the statute which also deals with rape, grievous bodily harm and the like) whereby the 'wanton or furious driving or racing' of a horse and carriage such as to cause bodily harm is an indictable offence carrying a maximum sentence of two years imprisonment. It is an offence to expose a horse for sale, shoe (barring accidents), train or break a horse on the highway under the Town Police Clauses Act 1847.

Children

Children under 14 years old *are* required to wear a hard hat under the Horses (Protective Headgear for Young Riders) Regulations 1992, when riding on the road.

Northern Ireland : the relevant legislation is the Horses (Protective Headgear for Young Riders) (Northern Ireland) Order 1990 which contains similar provisions to the English regulations.

Whether children should ride without adult accompaniment is a matter for parents or carers to decide. If an accident occurs and, on an objective basis, your assessment of their competence was incorrect then you may be liable in negligence. There is no precise age at which children are legally permitted to ride alone - it will depend on a number of factors including the child, the child's riding ability, the pony and the location of the ride.

The Pony Club (www.pony-club.org.uk) will advise, train and test their members on riding and road safety and their book, *Junior Road Rider*, gives a good grounding.

Northern Ireland : see similar provisions in the Employers' Liability (Compulsory Insurance) Regulations (Northern Ireland) 1999, as amended in 2005 and 2011.

Insurance

Insurance is not mandatory for private horse owners but at least third party liability insurance, which will cover claims in the event of an accident or injury caused by you or your horse, is strongly advised. You can, of course, take out more comprehensive cover and may find yourself automatically covered to some degree by virtue of certain memberships, such as BHS, but you will need to check.

Once you are running a business you will be required to take out insurance against claims by employees for accidents at work under the Employers' Liability (Compulsory Insurance) Act 1969 (as amended) with a £5 million minimum cover. It is advisable to take out the legal expenses cover option.

Drinking

Riders are not covered by the Road Traffic Act 1988 and related legislation and will not be breathalysed thereunder. However, riding (or driving a carriage) whilst drink is an offence under s12 of the Licensing Act 1872 (which also covers being drunk in charge of cattle or a steam engine!). You have to be actually 'drunk' rather than simply 'under the influence' of alcohol. Yet again, one would also be in breach of one's duty of care in negligence in these circumstances.

Horses and the Planning System

This section has been provided by John Bentley BSc, Dip. TP., MRTPI, to whom acknowledgement and thanks are extended. The notes on planning have not been undated fro some years but are retained as useful background.

Northern Ireland : see end of section.

Introduction

The position with horses under the town and country planning system is quite complex, largely because much of planning law centres around whether or not horses are connected with agriculture.

Below, I have tried to explain how horses fit in with government and local planning policy and the legal position regarding setting up horse enterprises, or simply keeping horses, erecting shelter for them, etc.

Horses and Planning Policy in England

Government policy on various planning topics is set out in a series of 'Planning Policy Statements' (PPS) – some of these are still called 'Planning Policy Guidance' (PPG), but all the new ones coming out are 'PPS's'.

The most relevant government policy statement is 'PPS 7', *Sustainable Development in the Countryside'.* This is available from www.odpm.gov.uk (look under 'planning', then 'policy'). PPS7 came out in August 2004 and is relatively brief in its comments on horses.

Paragraph 32 of the new PPS7 mentions that horse riding and other equestrian activities can help diversify the rural economy. It encourages local councils, who are the local planning authorities, to set out policies in their 'Local Plans' (and the new 'Local Development Documents' which will replace them under the recent planning reform approved by Parliament) which support equine enterprises that 'maintain environmental quality and countryside character'. A range of suitably located recreational and leisure facilities should therefore be provided for in these documents, and, where appropriate, "for the needs of training and breeding businesses". Conversion of farm buildings for enterprises is seen as acceptable, subject to environmental considerations.

PPS7 is more specific than its predecessor, PPG7, in emphasising the economic importance of equine activities. However, some of the detail previously contained in PPG7 has been omitted from the new PPS7, and the government is promising additional separate guidance to cover this in due course. However, both new and old policy is clear that horse enterprise in rural areas is acceptable if the enterprises are suitably located (e.g. non-obtrusive, well designed, appropriate building material used, no traffic problems generated, etc.).

Horses and Planning Permission

Whether planning permission is required for horse development depends on various factors, particularly on whether it constitutes development for the purpose of agriculture.

a) Horses and 'Agricultural Development'

Agriculture enjoys a privileged position under the British planning system. *The use of land for agriculture* (including changing the use of any land *to* agriculture) does not constitute "development" under planning law and so does not need an application for planning permission.

However, if it is intended to put up a building or structure on land or carry out engineering works to land for agricultural purposes then some form of permission will be required. This permission may be granted in two possible ways. Firstly, for certain buildings, structures and works to land the permission may be granted automatically under Part 6 of *The General Permitted Development Order 1995 (The GPDO)* – the rules are complex! For example, this automatic permission only applies to buildings under 465 sq. m. in floor area and various other criteria also have to be met. Siting and design of buildings still has to be approved by the planning authority, however.

Secondly, if these criteria are not met, then the farmer would have to apply for planning permission to the local planning authority, in the normal way.

It is therefore possible that horse-related development may benefit from being 'agriculture-related' - if so buildings may possibly be able to be erected under the GPDO, without having to make a normal planning application.

The definition of 'agriculture' under planning law includes '*the breeding and keeping of livestock" and "the use of land as grazing land'.* 'Livestock' has been held by law to relate only to livestock bred or kept for agricultural purposes. Land can be said to be used for 'grazing' if the horses are turned onto it with a view to feeding them from it, but not if they are kept on it for some other purpose (e.g. recreation), when grazing is seen as completely incidental and inevitable. Therefore a planning application is required for the use of land for the keeping of horses and for equestrian activities, unless they are kept as "livestock" or the land is used for 'grazing'. Horses kept for slaughter for food or as farm dray animals would be regarded as an 'agricultural' activity.

The law is quite complex in interpretation. For example, importation of food is often regarded as an indication that the activity is 'non-agricultural', so that a planning application would be required. Where horses are kept as an agricultural use, it may be possible to erect shelters, etc. under the GPDO, without having to apply for planning permission. If in doubt you should consult your local planning authority.

b) Horse not kept for Agricultural Purposes

Use of land and the erection of buildings and works to land for commercial equine business (e.g. stables, riding schools) *does* require planning permission from the local planning authority. As stated above, government planning policy is favourable to this, on the basis that it assists the rural economy, provided it is environmentally acceptable. The local planning authority will have to decide this when making a decision on a planning application.

Horses may of course be kept for personal domestic use, rather than commercial purposes. If a field is rented for this purpose, planning permission will be needed for any buildings or significant works, if the use is non-agricultural. In some cases planning permission may not be needed if shelters are easily moveable (e.g. on skids) and not fixed to the ground, because this may not constitute 'development' for planning purposes. Again the local planning authority should be consulted, if in doubt.

In some cases, where people have large gardens (but not a separate paddock), stables or loose boxes may be erected (without the need for an application for planning permission) within the curtilage of the dwelling house, for horses kept as pet animals or for the personal enjoyment of the owners. This is rather similar to a householder erecting a shed or house extension in their garden. It may be possible to do this without applying for planning permission because householders enjoy certain 'permitted development rights' under Part 1 of the GPDO (as farmers do for certain agricultural development). However, again a complex set of criteria apply (e.g. the size and position of the structure) and it is recommended that the local planning authority be consulted on whether planning permission is required.

The Planning System - Northern Ireland

The original version of this section, since updated, was provided by Karyn Hanna, solicitor with McKinty Wright of Belfast, to whom acknowledgement and thanks are extended.

The Planning Regime in Northern Ireland is governed by the Planning (Northern Ireland) Order 1991, as amended by the Planning (Northern Ireland) Order 2003, and the Planning (General Development Order) Northern Ireland 1993.

All applications for Planning Permission are initially submitted to and are dealt with by the Planning Service which is a department within the Department of the Environment. Planning Permission is required for any development within the meaning of Article 11 of the 1991 Order and would include the erection of stables. Each Council within Northern Ireland has a role to play in the planning system but that role is purely consultative. The Planning Service will refer a planning application to the relevant Planning Committee of the relevant authority with a recommendation. Councils can delay the grant of Planning Permission but they cannot veto any recommendation to grant permission.

In theory the Planning Service are required to give a decision on a Planning Application within 8 weeks although this would rarely happen except in the most straightforward and minor proposals.

If Planning Permission is refused, an applicant can submit an appeal to the Planning Appeals Commission which is an independent body whose decisions are published.

The Planning Service is required to serve notice of the Planning Application on the owners and occupiers of adjacent properties and must consider objections to any planning application. Objectors however have no right of appeal against the grant of a Planning Application.

The Planning Service has powers to take action against any individual who has carried out any development in breach of the Planning Order which would include bringing prosecutions which can result in fines of up to £30,000 and can also apply to the Court for an Enforcement Notice requiring buildings erected without Planning Permission to be demolished.

For further information see the Planning Service website at www.planningni.gov.uk which includes the Regional Development Strategy for Northern Ireland to 2025.

Fireworks

Northern Ireland : the Firework Regulations 2004 are not applicable. The handling and use of fireworks in the province is governed by the Explosives (Fireworks) Regulations (Northern Ireland) 2002 and private parties need to be licensed.

The firework season can cause considerable worry for those with horses and ponies and the Firework Regulations 2004 have recently promised to offer some relief although, in practical terms, may have little effect.

The Regulations prohibit the use of fireworks between 11pm and 7am other than on Chinese New Year, 5th November, Divali and New Year's Eve. They also prohibit fireworks of over 120 decibels and possession by under 18s. The RSPCA wanted a 95 decibel limit.

There is no requirement to inform neighbours or any other provisions which would be of particular use regarding horses. These regulations have been in force since 1st January 2005. Breach of the provisions can result in a maximum fine of £5,000 or six months imprisonment.

In addition to the new Regulations, the unreasonable use of fireworks might also constitute a private nuisance. Provisions on noise have tightened up in recent years and a one off event can constitute nuisance and the police have powers to stop noise at the time. However, they are unlikely, in practice, to do much with a single event such as a wedding party, or whatever, operating within the Firework Regulations parameters.

Hunting

Northern Ireland : Hunting is legal in Northern Ireland, the Hunting Act 2004 not being applicable in the province. The following might be of interest in looking at how a ban would operate if done under similar provisions to those operative in Scotland, England and Wales.

This section is not concerned with the pros and cons of the hunting debate, which still continues apace after the implementation of the Hunting Act 2004, and on which readers will have their own views. We will simply look at what is, and is not, permitted in terms of hunting with hounds.

The law :

From 18th February 2005 hare-coursing (s.5) and the hunting of wild mammals (s.1) with dogs is an offence. A person commits the offence if he hunts (s.1). He also commits an offence if he 'knowingly' allows his land (s.3(1)) or his dog s.3(2)) to be used in the commission of the offence. Land is deemed to be in the control of an owner, manager or occupier (s.11(3)). A dog is deemed to belong to someone who owns it or otherwise has charge or control (s.11(4)).

Exceptions to the law :

- Stalking and flushing out of cover are permitted, including the use of dogs below ground, so long as the animal is shot by a competent person. There are detailed provisions that govern this exception, including the use of a maximum of two dogs and the shooting of the animal as soon as possible, i.e. no element of a chase.
- Rats and rabbits are expressly exempted from the ban.
- Flushing out wild mammals for the purposes of falconry is exempted.
- There are some detailed provisions regarding the retrieval of shot hares, the recapture of wild mammals which have escaped from captivity and the rescue of wild mammals.

Penalties :

The offence carries a £5,000 fine (s.6).

Arrest - The offence is deemed to be an arrestable offence (s.7) which means that the police can arrest, without warrant, anyone they reasonably suspect of having committed the crime or being about to do so.

Search - The police can search people, vehicles or animals where they think an offence under the Act may be committed. They can enter land, premises or vehicles without warrant in order to carry out such a search (s.8).

Seizure - The police can seize and detain vehicles or animals where they think an offence under the Act may be committed (s.8).

What is permitted?

Riding out with hounds is allowed. The hounds can flush out a fox (or deer, etc.) but only in line with the stringent guidelines - i.e. a maximum of two dogs with fast shooting of the animal by a competent person.

The Act only applies to hunting with dogs in pursuit of wild mammals thus hunting without hounds or lack of live prey (drag hunting) is, of course, permissible. This raises the question of how to police a drag hunt when hounds get the scent of a fox. How will the police distinguish between a huntsman trying to bring the hounds under control and those actively engaged in the chase? Who knows?

Court Action :

The equivalent hunting ban in Scotland has been in place since the implementation of the Protection of Wild Mammals (Scotland) Act 2002 and it was first tested in the courts with respect to mounted fox hunting in December 2004 in the action against the Master of Fox Hounds of the Duke of Buccleuch's Hunt in Jedburgh Sheriff Court (*Procurator Fiscal v Adams* (2004)). The Master was acquitted - through 'lack of evidence' in the anti-hunt reports or due to 'strict compliance with the new law' in the hunt support reports. In short, it was held that the Buccleuch Hunt, under the control of the Master, was being run in accordance with the Act, as, in the Master's words 'a pest control service' where the fox would be flushed out in line with statutory provisions and shot swiftly at the first opportunity by a competent shot. Evidence of a chase was successfully rebutted. In fact, no fox was killed on the day in question, although more foxes have been killed in Scotland since the hunting ban than before (see Cramb, 2004). Note that the Scottish Act does not having the limit of two dogs for flushing out.

The first successful prosecution under the English Act was the *League Against Cruel Sports v Wright* (2006) where the huntsman asserted that he was hunting within the Act, with guns at the ready. However, this conviction was quashed on appeal in the Crown Court 2007. There have also been non-equine convictions under the Act, e.g. *RSPCA v McMullen* (2007) where the defendant was fine £750 for hunting badgers and/or foxes with dogs - his unsuccessful defence was that he had gone rabbiting and the death of a vixen was unplanned.

Technical challenges to the ban :

It might be noted that Mr Adams had been closely involved in the application and testing of the new laws. He was a party to the application for judicial review of the Scottish Act as being in contravention of the Human Rights Act 1998 heard in July 2004. The Countryside Alliance mounted a similar, and similarly unsuccessful, challenge to the English Act.

There was also a challenge launched on the grounds that the Act was only passed, after two dismissals by the House of Lords, by the invocation of the Parliament Act

1911 (as amended by the Parliament Act 1949) - which allows legislation to be passed *without* the approval of the Upper House. The Countryside Alliance asserted that the Parliament Act 1949 was invalid - based on jurisprudence stemming from *The Prince's Case* (1606) which states that a statute requires all three elements of the Crown and both Houses, to be valid. Although not without academic support (e.g. Sir William Wade, 1955), the matter was pronounced on by the Court of Appeal in February 2005 where it was stated that the Parliament Act was valid. On appeal to the House of Lords in *Jackson and others v Attorney General* [2005] nine Law Lords deliberated to hold that the Parliament Act 1949 is valid and thus the Hunting Act, passed thereunder, is good law. In addition to its statement on the Hunting Act, the judgment is of general interest in its exploration of the history of the Parliament Acts , introduced when the government, in the House of Commons, found it impossible to pass measures such as Irish Home Rule in the late 19th and early 20th centuries. The judgment is also not without its criticism of New Labour in using the Parliament Act for such purposes as the hunting ban, rather than reserving such dramatic powers for occasions of constitutional crisis.

Trailers and Driving

Northern Ireland : for local information see www.dvlni.gov.uk - the Driver Vehicle Licensing Northern Ireland site.

- Lorries must be plated annually (the equivalent of a car MOT).
- Trailers do not need annual MOT or plating but it will still be negligent if a badly maintained vehicle is the cause of an accident.
- Drivers who passed their test before 1st January 1997 can drive a range of passenger vehicles, trailers and horsebox combinations roughly speaking up to 8.5 tonnes combined weight. Those passing their test after that date will have to take an additional test. It is good practice for *all* drivers to have instruction in driving and towing large vehicles. In the event of an accident, even those with pre January 1997 driving licences will not avoid actions for negligence if they are clearly incompetent with the vehicle in hand. For details of tests contact : National Trailer and Towing Association (www.ntta.co.uk) , DVLA Swansea (www.dvla.gov.uk) or the Ifor Williams' Trailers website (http://www.iwt.co.uk).

If a horsebox (or combined vehicle and trailer) has a plated weight of more than 3.5 tonnes it will come within the legislation on commercial use, where relevant. This applies not just to clear trade use but to any use of the vehicle 'for hire or reward', e.g. taking friends' horses to shows in return for payment in money / money's worth.

Thankfully, simply taking one's own horses to shows to complete for cash prizes has been held not to bring one within the provisions.

The provisions require the fitting of a tachograph and compliance with permitted driver's hours, on penalty of a fine. For further details see the Vehicle and Operator Services Agency website at www.vosa.gov.uk.

It is good practice for all vehicles to carry a first aid kit but it is mandatory for commercial vehicles and where employees / self-employer workers are involved : Health and Safety (First-Aid) Regulations 1981 (see the accompanying Approved Code of Practice - HSE document L74 for further details.)

From January 2007 the Welfare of Animals During Transport Regulations (EC 1/2005) have been in place to ensure that those transporting animals in the course of business for journs of more than 65km but less than 8 hours need Level 1 certification, and for hourneys of more than 8 hours they will need Level 2. The regulations are not un-complicated and full details can be found on the Defra website.

Tort

Tort

Northern Ireland : as noted before, civil common law is largely common to Northern Ireland, England and Wales (with Scotland having rather more divergence).

Broadly speaking, a tort is a civil wrong, other than contract. The classification includes, among other things, negligence, trespass, private nuisance and defamation (libel and slander). Some brief notes follow on negligence, occupiers' liability (which is, effectively, a statutory extension to negligence principles) and trespass, which are the areas most likely to be of relevance in the context of riding, stable management and business.

Note that in Scots law the word 'delict' is almost (although, strictly, not quite) synonymous with 'tort'.

Underpinning a general philosophy of compensation, rather than providing any specific new terms, the Compensation Act 2006 may help those running activities and events, in that the Act guides the court to consider whether any particular steps taken to meet a standard of care or avoid a particular risk, would have prevented a desirable activity from taking place. The statute does not change the standard of care, nor the circumstances in which a duty to take that care will be owed. It is solely concerned with the court's assessment of what constitutes *reasonable* care.

Negligence

Civil liability under the common law tort of negligence has been mentioned a number of times in these notes. This section is a brief explanation of the principles involved and some examples of its application in our area of interest. It should be noted that any given scenario could result in legal actions under a number of different heads in different courts. Thus if a teenager is allowed to drive a large box by an unlicensed riding school, causing an accident, there could be a civil action for negligence in the County or High Court together with a prosecution in the Magistrates' or Crown Court for breach of the Riding Establishments Act 1964 and health and safety law.

The idea of negligence was discussed at least as far back as the 19th century (see *Blyth v Birmingham Waterworks Co.* (1856)) but the modern law is based on the judgment in *Donaghue v Stevenson* [1932]. Three matters have to be established to succeed in a negligence action :

- The defendant must owe the claimant (victim) a duty of care.
- The duty of care must have been breached.
- The damage to the defendant, unintended by the claimant, must be a (relatively) foreseeable result of that breach.

To whom is a duty of care owed?

Care is owed to those who are foreseeably likely to be affected by one's actions, sometimes referred to in law as one's neighbours. In an equine context, then, a duty would be owed, for example :

- by instructors to pupils
- by livery stable proprietors to clients
- by employers to employees
- by saddlers, farriers, and any other provided of goods or services, to customers
- by competition organisers to competitors and spectators
- by road users to other road users
- by a horse owner who allows another to ride their horse
- by an expert who knows his advice is being relied on by a lay person

The possibilities are endless and the above is simply illustrative.

What constitutes a breach of duty of care?

In general terms, there is an objective standard of ordinary prudence, care and skill. Where one is acting in a skilled or professional capacity (whether or not one actually *has* the skill required) then the guide is a competent member of the trade or profession in question. It will be a question of fact, based on good practice and the experience of the various parties involved.

Persons who bring animals into public places, e.g. the highway, must take reasonable care to prevent harm to persons there (*Deen v Davis* [1935] - a case involving inadequate tethering). Bolting, or otherwise loose, horses which have been left largely unattended will normally indicate negligence (*Gayler and Pope Limited v B Davies & Son Limited* [1924]) and the owner may well be liable to persons injured in trying to stop the horse (*Haynes v Harwood* [1935]).

Resultant Damage

The third requirement is normally straightforward although if the damage resulting from the breach is completely unforeseeable (*The Wagon Mound* [1961] - where a freak fire was caused by a combination of wind and other conditions) or if the damage did not result from the breach (*Barnet v Kensington and Chelsea Hospital Committee* [1967] - where poor hospital treatment of an arsenic victim did not *cause* the death as there is no cure for arsenic) then the action will fail.

Also there may be a break in the chain of causation - an example would be where relatively minor injuries are sustained after a riding accident, caused by another's negligence, but serious injury or death ultimately results due to poor hospital treatment. But for the riding accident the claimant would not have been in hospital but is it fair to sue the instigator of a minor incident for death? It will be a matter of fact and degree as to whether the intervening event (hospital treatment in our case) is sufficient to break the chain of causation - *Morris v Solihull Health Care NHS Trust*

[1999]. This issue can become even more emotive in the criminal context : where someone is in hospital due to a minor thump and dies due to poor treatment, does one charge the aggressor with murder?

Examples of negligent behaviour :

- you allow an inexperienced rider onto a difficult horse and they are injured
- you know a horse kicks but tie it up near to a lot of people and someone is hurt when it kicks
- you fail to fence your fields adequately and horses escape causing a car crash
- you feed a horse on full livery inappropriately and it throws its novice owner
- you drive too close and fast by horses on the road
- you ride a horse on the road knowing it is uncontrollable near tractors
- rather more unusually, you fire up hot air balloon burners when flying very low and near to horse and rider (*Stiven v Andrewartha* [1997])
- you give advice, even in an unpaid capacity to a friend, which you know is being relied on because you are being consulted as someone with expert knowledge (*Chaudhry v Prabhakar* [1988])
-

Third Parties Trying to Mitigate Damage

Where persons try to stop runaway horses the owner / person in control of the horse is likely to be liable. In *Haynes v Harwood* [1935] the argument that the 'rescuer' voluntarily accepted the risk by consciously entering a hazardous situation, was rejected as the victim, a police officer, was endeavouring to protect children and others on a crowded street. Conversely, in *Cutler v United Dairies* [1933] a 'rescuer' trying to stop a bolting horse failed to recover damages as the horse was contained in a generally safe environment (a field) and did not pose a public threat, thus could have been left to stop in its own time.

Contributory Negligence

Where an incident is caused by another's negligence but the victim's actions cause or exacerbate injury or damage then, per the Law Reform (Contributory Negligence) Act 1945, compensation will be reduced at the court's discretion, in theory up to 100%.

For **Northern Ireland** see the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 which contains similar provisions to the 1945 English legislation.

There is always a duty to behave safely and to avoid and mitigate risk where possible, e.g. by the normal good practice of checking tack, horses shoes, tightening the girth, etc.

A common example of contributory negligence would be not wearing a hard hat, not only when riding, but when lunging and generally handling horses.

Limitation

From the 'ambulance chasing' advertisements of certain firms of solicitors in recent years, many people are aware that the normal rule is that there is three years from the date of injury to make a claim (Limitation Act 1980). There are exceptions to this but they should not be relied on - always work within the three year rule where possible.

For **Northern Ireland** see the Limitation (Northern Ireland) Order 1989 for similar provisions.

Unlikely with horse related claims, but if the injury or damage was not apparent until a later date then the three year limitation period runs from the date the cause is ascertained.

The courts also have discretion to allow claims outside the three years if it is considered fair to do so, e.g. the injury gets much worse over a period of time or a solicitor gives poor initial advice.

There is no limitation period where the claimant is incapable within the meaning of the Mental Health Act 1983.

It may be noted that if compensation from the Criminal Injuries Compensation Board is sought then the limitation period is two years.

Vicarious Liability

In addition to being liable for one's own negligence the principle of vicarious liability means that one may be liable for the negligence of, typically, one's children, employees or colleagues (*Chute Farms Ltd v Curtis* [1961]) but possibly others, e.g. hunt masters being liable for the civil wrongs of mounted followers, hunt servants and even the hounds (*League Against Cruel Sports v Scott and others* [1985]).

In the case of employees, the employer will be liable so long as the employee is negligent in the course of carrying out their employment, even if in an expressly prohibited way. Where the driver of a horse-drawn omnibus raced against a driver of a rival company, against express instruction, the employer was still liable as the employee was carrying out their job, i.e. carrying out an authorised act in a wrongful manner (*Limpus v London General Omnibus Co.* (1862)). Contrast the example where an employee is instructed to lead horses from yard to field and the employee

rides them - this would be an unauthorised act thus *not* 'in the course of employment (*Twine v Bean's Express* [1946]).

This provision is for the greater protection of the injured party and the employer should be carrying adequate insurance. It is also said to encourage the employer to ensure good working practices although Lord Pearce in *ICI v Shatwell* [1965] felt that the doctrine of vicarious liability '… has not grown from any very clear, logical or legal principle but from social convenience and rough justice.'

A technically different but closely related point is that the employer may be sued for their *personal* negligence (rather than their vicarious liability for the employee's negligence) where they have engaged incompetent employees.

What to do in the event of an accident?

The duty to mitigate damage has been discuss above under *Contributory Negligence*. Although hopefully unnecessary, the following points may prove useful :

- Get self and horse off road as soon as possible in the event of an accident.
- Carry mobile phone on person, not on saddle (to avoid difficulty if horse makes off!).
- Follow standard first aid procedure and do not attempt to remove hard hat.
- Record accident in contemporaneous written statements supported by photos, videos or even sketches, where possible and get witnesses to write and sign their own statements if possible. Include place, time, weather conditions, state of the ground. The BHS accident report form can usefully be consulted. As part of their campaign to improve road safety for horse and rider, the BHS request that they are informed of all road accidents.

Personal Injury

Personal injury situations often involve a civil action for negligence through the County Court or the High Court. There may also be criminal charges, probably administered by the Crown Prosecution Service, dealt with in the Magistrates or Crown Court, e.g. for road traffic offences.

For minor matters where the amount sought is less than £1,000 the Small Claims Procedure will be used. Although aimed at claimants being able to conduct the case without further advice, legal assistance should always be sought in cases of personal injury.

Some illustrative court cases on negligence :

Aldham v United Dairies (London) Limited [1940]
Where a horse has no previous history of bad behaviour the rider / driver will not be negligent if the horse suddenly does something beyond their control. In this case, a normally docile milk cart horse bit a passing pedestrian.

Burnes v Ellicott [1969]
Car drivers must be extremely cautious in passing horses. They are under a duty being to slow down and, if necessary, to stop. Mr Elliot drove too close to Miss Burnes, who was riding up a narrow road, causing the horse to rear up and catch one of its' forelegs on the front bumper.

Carryfast Limited v Hack [1981]
This case confirmed the general principle from *Aldham* where a generally quiet horse suddenly spooked - a van, on the A607 between Melton Mowbray and Leicester, swerved to avoid a horse, being ridden by Elaine Hack, and went into a lorry. It was held that the accident was caused by the van failing to drive slowly enough near the horse - drivers should always be aware that horses can behave in an unpredictable way.

Haimes v Watson [1981]
This case again confirms that a rider has no absolute duty to prevent an otherwise stable horse going out of control on the highway. Mr Haimes' horse moved out into the path of an overtaking car - the car driver, Alan Watson, was held to be negligent because it was acknowledged that a rider cannot be absolutely certain of his horse's behaviour and drivers should take all due precautions in terms of clearance.

MacClancy v Carenza [2007]
In a case where a relatively experienced pupil was injured going over a cross country jump being knocked off by a tree branch, the Court of Appeal held that the riding school and/or riding teacher were not negligent. They clearly owe a duty of care to pupils but this duty had not been breached - riding carries with it an element of risk and unpredictability and the accident came within such inherent risks. There had been no lack of care in the matching of horse and rider or the management of the activity.

Occupiers' Liability

Northern Ireland : liability for personal injury or damage to property suffered by lawful visitors is dealt with under the Occupiers' Liability Act 1957, along with England and Wales, as detailed below. Liability for personal injury to unlawful visitors is covered by Occupiers' Liability (Northern Ireland) Order 1987 which contains very similar provisions to the English Occupiers' Liability Act 1984.

Occupiers of land may be liable to people who are hurt, or who suffer damage to property, on their land. Whether any duty of care is owed, and the extent of that duty, depends on the status of the visitors. The law seeks to find a balance between compensating those who suffer injury or loss on land and the expectation that they take responsibility for their own safety. Recent case law has moved toward landowners' interests and a common sense view of the personal responsibility of adults for their own safety : in *Tomlinson v Congleton Borough Council* [2003] a local authority were held *not* to be liable when an 18 year old was badly injured in a lake surrounded by 'danger' and 'no swimming' signs.

Lawful Visitors

People who are allowed to be on particular premises are lawful visitors, whether they are expressly invited social visitors, clients and customers, neighbours popping in for coffee or people who have a legal right to be there, such as postmen.

Under the Occupiers' Liability Act 1957, the occupier owes such visitors 'a common duty of care', i.e. a duty to take such care as is reasonable to keep the visitor reasonably safe.

If this statute is breached there is liability for both personal injury and damage to property.

In certain circumstances, there will be other provisions operative, such as the Health and Safety at Work Act for business premises.

Unlawful Visitors

Trespassers are, unsurprisingly, owed a lower level of care than lawful visitors. However, in certain circumstances the occupier might still be liable for their injuries.

The Occupiers' Liability Act 1984 imposes a duty of care for unlawful visitors when :

(a) the occupier knows, or should know, that the trespasser is there
(b) knows, or should know, of the danger
(c) it is a risk which it is reasonable to expect the occupier to protect the visitor against

With adult trespassers, it is likely that, unless the danger is unusually hazardous, warning notices will suffice (*Ratcliffe v McConnell* [1999], *Tomlinson v Congleton Borough Council* [2003]).

Persons on Public Rights of Way

No duty of care is owed to persons on public rights of way or access land, unless the occupier has actively caused the offending risk. This area is discussed in slightly more detail under *Rights of Way* below.

Persons on Private Rights of Way

Where there are private rights of way, such as easements, over land the user will have the limited protection of the Occupiers' Liability Act 1984, i.e. the same duty of care as is owed to trespassers, bearing in mind that (per s.1 (1) (a)) the occupier will know that the person is there.

Children

Particular care needs to be taken where there are potentially dangerous features on the premises which are known to or are likely to attract children (lawful or trespassing).

These might include hay bales, lakes and ponds, out-buildings, farm machinery or even muck heaps.

It is not expected that impractical measures are taken to make every possible risk completely impermeable but warning notices may well not be sufficient and reasonable precautions, such as fencing, will be required (*British Railways Board v Herrington* [1972]).

Horses injuring persons on public footpaths or bridleways running through field

The keeper will be liable for any injury only in so far as they have been negligent, e.g. if they know the horse is particularly likely to chase, kick or bite. Horses engaging in 'normal' behaviour, such as gentle nuzzling, will not give rise to liability (*Miller v Duggan* (1996)).

Warning Notices

There is no precise advice possible about erecting warning notices near hazards. However, their presence may well discharge the duty of reasonable care.

Advice is sometimes given, cynically, that *vis à vis* trespassers, the erection of signs indicates that the occupier is aware of the trespassers' presence and thus more likely to fall foul of the OLA 1984 provisions.

In all good faith, warning passers by (whether lawfully or unlawfully on the land) of particular dangers can only help discharge a duty of care (although it may not be enough if the danger is one that requires fencing off), and is, morally and legally, the appropriate approach.

A County Court case involving cattle, might give rise for concern. In *McKaskie v Cameron* (2009) the judge found a farmer liable for breach of his duty of care (and also under the Animals Act) where a walker on a public footpath was very badly injured by cattle (cows with calves at foot, although not young calves) in the field. Essentially, it was held that the farmer should have been aware that the cattle might have posed a danger to walkers and should either have had them in other fields or put temporary fencing to keep them away from the path. He should also have signs indicating the position (e.g. the new NFU signs which read : "Your dog might excite farm animals, keep on a lead around livestock but let go if chased by cattle.").

Landlords

Note the burden on landlords for their premises, depending on the nature of the tenancy, under the Defective Premises Act 1972.

Northern Ireland : similar provisions contained in the Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001.

Trespass

Civil Trespass

Once off a designated right of way then there is civil trespass, thus signs indicating that 'trespassers will be prosecuted' are largely incorrect but 'trespassers will be sued' does not quite have the same punch.

Trespass requires some level of intent, thus if you lose a bridleway and are asked to leave someone's private land then so long as you do so by the shortest possible means then the landowner cannot sue.

There can be liability for the trespass of animals over which control can be exercised, e.g. masters of fox hounds have been successfully sued for the trespass of hounds (*League Against Cruel Sports v Scott and others* [1985]).

It may be noted that highways, including footpaths and bridleways, are for 'passing and re-passing' and unlawful use of highways in the way of undue loitering may convert lawful use into trespass, as was found in *Hickman v Massey* [1900] where the defendant stalked a short stretch of highway to spy on racehorse trials.

It is permissible to use 'reasonable' force to remove trespassers but not before a request to leave and the use of force may result in a counter action by the trespasser for assault and is not to be recommended (*R v Chief Constable of Devon & Cornwall, ex parte CEGB* [1982]). In cases of repeated trespass application may be made for an injunction from the County Court.

It may be noted that self-help in the form of loosing a 'savage' horse onto a field across which trespassers regularly took a short cut was not permissible and the horse / land owner was liable for the plaintiff's resultant injuries (*Lowery v Walker* [1911]).

Criminal Trespass

In certain circumstances trespass is a criminal matter (per the Criminal Justice and Public Order Act 1994, as amended by the Anti-social Behaviour Act 2003). These include :

- *Raves*
  20 or more people

- *Travellers*
  Where two or more people are trespassing on land in order to reside there *and*
  the landowner has taken reasonable steps to require them to leave *and*
  they have failed to do so *and there is either :*
  damage caused to the land or property, *or*
  threatening / abusive behaviour towards the occupier, his family or agent, *or*
  the trespassers have six or more vehicles (including caravans)

- Trespass accompanied by intimidation of persons engaged in lawful activity (a provision which has been used against hunt saboteurs).

In addition, the police have powers (under the Criminal Justice and Public Order Act 1994 later increased under the Anti-social Behaviour Act 2003) to move people on at the request of the occupier, in the absence of any of the above behaviour. However, they cannot use these powers where there is no suitable local authority site to move travellers onto, thus the powers are of limited use in practice.

In the absence of effective police assistance landowners can issue proceedings to recover possession of land. The procedure should take around 10 days, under the guidance of a solicitor.

Comment on tortious liability :

In *MacClancy v Carenza* [2007] a riding school were not negligent for a pupil's accident.

In *Cole v Davies-Gilbert and others* [2007] there was no liability by the occupiers of land or event organizers for a serious injury sustained by lady tripping in a hole made in a village green by a may-pole, unused for several years.

The Compensation Act 2006, in looking at liability in respect of organized events, particularly school trips, seeks to balance the risk of the activity with the greater loss to the community in general by *not* running such activities for fear of litigation.

These three recent matters might be seen as a shift (echoed in other areas such as the Health and Safety Executive's stance on health and safety compliance) towards a common sense approach such that some activities do carry an element of risk, as does every-day life, and not all accidents are someone's 'fault'.

Note that if the trespass is not within the very clear remit of criminal trespass there may be an alternative route to legal action via the Protection from Harassment Act 1997, breach of which is a criminal offence and also allows a civil action for injunction. The defendant must establish, in this case, that there is the defendant has pursued a *course of conduct*, the course of conduct amounted to *harassment* of another person and that the defendant knew or ought to have known that the course of conduct amounted to harassment. Harassment is defined as **causing alarm or causing distress** and a course of conduct, which can include speech, must involve conduct on at least two occasions. The incidents do not have to be the same type of behaviour on both occasions.

Rights of Way

Rights of Way

Northern Ireland : note that the Highways Act 1980, the Wildlife and Countryside Act 1981 and the Countryside and Rights of Way Act 2000 are largely inapplicable in NI. Most of the legislation relating to rights of way, their access, management and maintenance is contained in the Access to the Countryside (Northern Ireland) Order 1983.

Although the statistics differ between the Department of Transport and the BHS, it is clear that there are a number of accidents each and every day involving riders and horses and the road - many of these are serious and some are fatal. Access to free bridleways is thus an extremely important part of being able to enjoying relaxed hacking. Indeed, access to a good network of bridleways within short and safe riding distance can significantly increase the marketability of an equestrian property.

There are nearly 30,000 miles of bridleways and byways in England and Wales but, as many riders will know, coverage is fragmented.

The complexity, but also the very real achievability of success, can be seen from the development of part of The Pennine Bridleway (206 miles from Derbyshire to Cumbria). A new 50 mile stretch in Lancashire involved 29 different agreements with landowners and farmers and 22 new rights of way (NFU Countryside Magazine, May 2002). For more details see www.emagin.org, the BHS Equine Mapping and Geographical Information Network.

Further information on bridleways is available on the Natural England website under *Conservation Walks and Rides Register* (http://cwr.naturalengland.org.uk) where rides can be searched for by county.

Categories of Public Rights of Way

Byways open to all traffic (BOAT)	Self explanatory.
Restricted byways	Right of way on foot, horseback, leading a horse and in non-mechanical vehicles
Bridleway	Right of way on foot, horseback or leading a horse or (per Countryside Act 1968) on cycle.
Footpath	Unclassified county road, field road or green lane (UCRS) with right of way on foot only.

These minimum rights might be extended in specific instances, e.g. the right to drive animals.

The designation of RUPP : roads used as a public path, may be encountered but under CROW (Countryside and Rights of Way Act) they have been reclassified as restricted byways.

Location

All existing rights of way are recorded on definitive maps held with local councils (as required by the Wildlife and Countryside Act 1981) and, probably, local libraries. See *A guide to definitive maps - changes to public rights of way* (NE 112) available to download from Natural England (www.naturalengland.org.uk/). The council have a duty (under the same Act) to keep the maps under continuous review. On Ordnance Survey maps bridleways will be shown as a line of green dashes.

Incorrect Maps

Application may be made to the 'surveying authority' (the county, district or metropolitan borough council) to amend the map where a path or bridleway is not marked or where it is considered that a path is erroneously marked or should be downgraded from, say a bridleway to a footpath. After a run of conflicting case law it was held in *R v Secretary of State for the Environment, ex parte Simms* and *ex parte Burrows* [1990] that where there is conclusive evidence that a definitive map is incorrect then a path or bridleway can be reclassified or deleted (*Rubinstein v Secretary of State for the Environment* [1988] overruled).

Information on the procedure is available from the local authority and assistance with the preparation of evidence, including a sample witness questionnaire, is available from the BHS. If unsatisfied with the outcome of such an application, there is a right of appeal to the Secretary of State (DEFRA).

Alteration

It is possible under the Highways Act 1980, but extremely difficult, to obtain an extinguishment order. More practical would be to apply to the local authority for a diversion order the under Countryside and Rights of Way Act 2000. There is a right of appeal to the Secretary of State against a refusal. This procedure is, however, likely to incur expense and certainly considerable time - years rather than months. Local authorities will be able to advise.

Obstruction

Wilful obstruction of a right of way is a criminal offence under the Highways Act 1980 and, if repeated, under the Countryside and Rights of Way Act 2000.

Gates, stiles and fences can only be put across rights of way if marked on the original dedication, otherwise they constitute obstruction. However, the highway authority can give permission for such structures if required for agricultural, forestry or equine

purposes. It is an offence to rope off rights of way, even temporarily, so other methods of stock control should be sought.

Maintenance

The general rule is that maintenance of gates, and stiles, etc. is the responsibility of the landowner (s14 Highways Act 1980) with a contribution of a minimum of 25% by the highway authority. If landowner fails to make repairs the authority may, after 14 days notice, enter and do the work and recover the costs. The highway authority is responsible for the repair and maintenance of the surface of public rights of way.

Agreement may be obtained by the landowner that highway authority has entire responsibility for repair and maintenance costs.

Gates and Fences

There are no specific provisions as to the nature of fences to be used alongside public rights of way but if path is very narrow or, say, is used extensively at night then barbed wire and electric fencing might constitute a nuisance. Barbed wire may also be ordered to be removed under s164 Highways Act 1980.

The British Standard governing the specification for stiles and gates on public rights of way (BS 5709:2001) is available on www.bsi-global.com. Your local authority will be able to advise further.

Vegetation and Trees

Overhanging vegetation should be controlled by the landowner and the authorities may give notice to cut back, often preceded by an informal phone call. The highway authority can carry out the work if their notices are ignored and can recover the costs from landowner.

An occupier will be liable if people are injured on a public right of way by falling trees *if* it is due to the occupier's negligence. Good practice dictates the periodic inspection of trees to ensure that disease, wind damage, etc. has not rendered them likely to fall.

Crop Spraying

If crop spraying near paths the Health and Safety at Work Act 1974 dictates that warning signs should be placed at entry points of path. Spraying should stop if people are on the path or field in question.

Ploughing

There is a statutory right to plough crossfield footpaths and bridleways but not field edge paths (Rights of Way Act 1990). There is no right to plough a restricted byway. The path must be made good within 14 days. An extension of up to 28 days can be obtained by application in writing to the highway authority.

Minimum and Maximum Widths

Bridleways - 2m / 3m cross field
3m / 5m at field edge
or as otherwise recorded on the definitive map - Rights of Way Act 1990.

Signposts

The highway authority is responsible for the erection of signposts from the metalled highway. After that, signs are put up on a discretionary basis in consultation with the occupier (Countryside Act 1968). The occupier is also entitled to put up signs, with the prior consent of the authority. Arrows are blue for bridleways, yellow for footpaths and red for byways open to all traffic (BOATS)

Shooting

It is an offence under the Highways Act 1980 to shoot within 50 feet of a highway *other* than footpaths or bridleways. However, shooting near footpaths and bridleways may be nuisance or negligence if it is known people are on the path and / or it causes a disturbance. There are, of course, legislative provisions preventing the discharge of firearms in the street (Town Police Clauses Act 1847) and on general firearms practice (Firearms Act 1968).

Animals - General

The general rule is that the keeping of animals on or near a public right of way is permissible unless it prevents the free, safe and uninterrupted use and thus comes within the obstruction or nuisance provisions.

Dogs running free on the path, as is common on farms and equine properties, may be a nuisance if threatening or uncontrolled but fearsome dogs leaping at a fence and barking at passers by were not an obstruction under the Highways Act (*Kent County Council v Holland* [1996]). Vicious dogs are covered by additional legislation such as the Dangerous Dogs Act 1991.

There is liability under the Animals Act 1971 where animals of a non dangerous species (e.g. dogs, cows or horses) are known to have vicious tendencies, e.g. there was liability where cows repeatedly charged at a solicitor (bad luck for farmer!)

walking his dogs on a public footpath (*Birch v Mills* unreported). Conversely, horses gathering round and nuzzling a walker were held to be non dangerous and simply acting in a normal manner (*Miller v Duggan* (1996)).

Bulls

Under the Wildlife and Countryside Act 1981 (s.59) it is permissible to keep bulls under 10 months old *or* non-dairy bulls running with cows and heifers on land crossed by a right of way. It is a crime for any other bulls to be on such land. Recognised dairy breeds, for this purpose, are Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry. Even if bulls are in permitted categories or situations one must not put people at risk under the general Health and Safety at Work Act provisions nor be negligent, cause a nuisance or contravene Animals Act stipulations regarding animals known to be of an aggressive disposition.

Bird Scarers

There is no specific prohibition against using bird scarers or other noise makers near to rights of way but if it is known that it regularly spooks horses then, in the event of injury, there may be a case in negligence. Equally, if the noise is of an undue frequency and level there may be nuisance.

Countryside and Rights of Way Act 2000

This legislation is not applicable in **Northern Ireland.**

The Countryside and Rights of Way Act was much heralded as introducing the so called 'right to roam' with many landowners and occupiers fearing members of the public wandering freely across their land. This will not happen because, apart from anything else, cultivated land, i.e. farmland, is expressly excluded.

The two main things the Act has done, for practical purposes, are :

(a) To introduce new rights of access to mountain, moor, heath, down and registered common land, once maps of these areas have been drawn up by the Countryside Agency and Countryside Council for Wales, a process which should take three to four years.

(b) To provide that occupiers will have no liability to those on access land for injuries resulting from natural features of the land. Thus walkers on access land will be owed an even lower duty of care than trespassers.

Landowners will be able to voluntarily dedicate any land for permanent public access under Access to the Countryside (Dedication of Land) (England) Regulations 2003 with the consequent protection against liability.

Certain land is specifically excluded from CROW including cultivated land, land consisting of improved or semi-improved grassland, golf courses, racecourses, railways and buildings.

The Act relates to walking and gives no new rights to ride horses, though where these rights already exist they remain unaffected.

Landowners may exclude or restrict access for any reason for up to 28 days a year without seeking permission, although closures at weekends are to be limited. Further exclusions or restriction may be agreed on grounds of nature and heritage conservation, fire prevention, to avoid danger to the public and for land management reasons.

A new countryside code was introduced in July 2004 which informs landowners of their responsibilities and will ensure that the public are properly informed about their new rights and how to enjoy them responsibly.

Up to date information on the progress of mapping and the implementation of the CROW Act can be obtained from www.gov.uk/right-of-way-open-access-land.

Liability to Walkers on Public Rights of Way

There is no liability by occupiers of land to users of public rights of way *unless* (a) the occupier has diverted the path or (b) the occupier has caused the injury either consciously or negligently, e.g. wiring across the route.

This was the position under previous case law (*Greenhalgh v British Railways* Board [1969] and *McGeown v Northern Ireland Housing Executive* [1994]) and was reaffirmed by CROW 2000.

The local authority may require an occupier to fence off or otherwise obviate dangers near a public right of way. It would be prudent to do so anyway. There are more detailed specific rules applicable for certain situations, e.g. the mandatory fencing of disused quarries and pits under the Mines and Quarries Act 1954.

Pro-active groups may be set up by local councils, parish path partnerships and farmers' groups help to sign and maintain paths.

The Disability Discrimination Act 1995 introduced requirements for service providers to prevent discrimination against disabled people, now within the Equality Act 2010. Although local highway authorities and the Highways Agency are not recognised as service providers at present they should aim to comply with the Act until such time as a legal precedent has been set to confirm their status. The key principle is that disabled people should not be discriminated against (through non-provision of services or a different level of provision) by service providers when accessing everyday services that others take for granted.

Business

Licensing / Local Authority Liaison, etc.

Riding schools

The following licensing requirements under the 1964 Act are not applicable in **Northern Ireland.**

It is a criminal offence to run a riding school without a licence from the local authority under the Riding Establishments Act 1964. Stables which hire out horses for riding or which offer tuition are covered. Livery stables do *not* need such a licence. The applicant must be over 18 year old, not barred from keeping animals and there will be an inspection report by a vet, possibly accompanied by an Environmental Health or Health and Safety Officer. They will look, amongst other things, at the suitability of the applicant, the condition and care of the horses and ponies, measures for the control of infection and fire safety procedures.

The BHS and the Association of British Riding Schools (ABRS) also run approval schemes, supported by regular unannounced visits, which seek higher standards than local authority basics.

The licensing authorities will provide information on compliance.

Livery

Livery yards are not covered by mandatory licensing legislation in the same way as riding schools. However, there is a BHS Code of Practice which must be followed in order to obtain BHS Livery Yard Approval. A failure to reach acceptable standards of safety and welfare would also, of course, be negligent.

Plans to introduce similar local authority approval as exists for riding schools under the Animal Welfare Act have not materialised.

Children

Riding schools dealing with children need to be aware of the child protection legislation now in place. The BHS and ABRS can advise on this and the BHS run regular workshops. Those working more extensively with children than 1 hour lessons may wish to review NSPCC/EduCare distance learning packs : www.nspcc.org.uk/Inform/trainingandconsultancy/educare/educare_wda47928.html developed between the NSPCC and Sport England and the Children Protection in Sport Unit.

If working with under 8 year olds for period of more than 2 hours (without a parent / carer present), Ofsted registration is required - see www.ofsted.gov.uk.

Anyone working with children should have a Disclosure and Barring Service (DBS) check (formerly CRB check), see www.gov.uk/disclosure-barring-service-check. For Scotland see www.disclosurescotland.co.uk/apply/employers/.

For further information see the booklet *Positively Safe : a practical guide to safeguarding* published by Children England.
www.childrenengland.org.uk/upload/Positively%20safe%20Final.pdf.

Since 1st January 2006 the agreement between the British Equestrian Federation (BEF) and its member organisations requires the 'vetting' procedures of anyone coming into contact with children.

For **Northern Ireland** see www.nidreict.gov.uk/accessni for the Northern Ireland Criminal History Disclosure Service which carries out equivalent checks.

Food

Businesses sometimes grow and develop in a relatively unplanned way and one can find oneself inadvertently in breach of the law. If you find yourself likely to prepare and serve food to your clients on a commercial basis, you will need to register the fact with your local authority (Food Safety Act 1990). They will provide the information you need and inspections of the relevant premises will be made. Those selling alcohol will, of course, need to obtain a licence - also dealt with through local authorities.

Northern Ireland : see the Food Safety Order (Northern Ireland) 1991, as amended by the Food Safety (Northern Ireland) Order 1991 (Amendment) Regulations (Northern Ireland) 2004 and the General Food Regulation (Northern Ireland) 2004.

Business Structure

The forms of structure available, for practical purposes, are sole trader, partnership, limited liability partnership (LLP) and private limited company. There are other forms of business structure (e.g. co-operatives and unlimited companies) which are less likely to be relevant for the purposes of these notes.

Formalities

A sole trader needs no formal start up (other than trade specific rules, e.g. for riding schools). The tax office needs to be informed within three months of the commencement of trade, as with any other form of business.

A partnership needs no formal start up although a partnership agreement is *strongly* recommended. The fact that partners may be family or friends is even more reason to get agreed provisions on paper to avoid disagreement and misunderstandings at a later date, and avoid unwanted default provisions being imposed by the Partnership Act 1890. Ideally, consult a solicitor but a DIY schedule (and a brief example of suggested clauses is appended to these notes) is valid at law and will ensure, at least, that matters are raised, discussed and agreed at the outset.

Private limited companies and (the relatively new) limited liability partnerships (Limited Liability Partnership Act 2000) cannot exist or operate legally prior to registration with Companies House. The forms required are simple to complete and full details are available at www.companieshouse.gov.uk, together with a number of helpful explanatory leaflets such as one dealing with business names. However, it would not be prudent to register without legal advice.

Limited Liability

The factor which most people cite as the main difference between sole traders and partnerships *and* LLPs and limited companies is limited liability. This can be a useful protection if the business fails although any lenders (as opposed to day to day trade creditors) are likely to ask for personal guarantees.

Joint and Several Liability

A consequence of partnership which needs to be understood is that of joint and several liability. Where someone is owed, for example, £15,000 by a partnership with three equal partners many people assume that each partner owes £5,000. In fact, the creditor can choose which one of the partners he sues and then sue that one partner for the entire £15,000. It is then for the partners to sort it out between themselves. There is even joint and several liability for fellow partner's crimes, if they are carried out in the course of the partnership business. Moral : choose your business partners with care.

Taxation

You can be a sole trader or partnership without any formal intent and if the Revenue consider that you are trading you will be liable to pay tax on your profits, regardless of whether you have formally announced, or even consider, that you are 'in business'.

Partners and LLPs are taxed on their share of the profits whereas directors of companies are dealt with as employees and take a salary on which PAYE will be paid as with any other employee. They may also take dividends, which enjoy more favourable tax treatment (e.g. there is no National Insurance due). However, the Revenue no longer permit directors to have their entire takings as dividends.

Taxation is the main reason, other than limited liability, likely to promote incorporation. There is no precise threshold above which it is financially beneficial to incorporate as it will depend on many different factors including the parties' other sources of income and both legal and accountancy advice should be sought. In the past year, having made incorporation attractive to small businesses, the Chancellor altered the tax treatment of dividends to make it less attractive. The situation can change with each budget so regular advice will be necessary.

Do seek personal recommendation of accountants to ensure that one with agricultural / equine experience is used. There are many specialist provisions and reliefs in this area and if you are the only farming / horse client then you may well not be given the best advice.

Do be wary of leaping into major changes in structure simply for tax purposes if you have a relatively small turnover. The savings will be unlikely to be more than a few hundred pounds per annum and not balanced by the increased professional fees and administration.

Business Dispute Resolution

Ideally, partnership and other business agreements will include an arbitration clause agreeing to use an independent third party (rather than court) in the event of a dispute. This could be a member of a relevant specialist body, such as a Fellow of the British Horse Society, or a business mediator through ACAS (www.acas.org.uk) or a Chartered Arbitrator (www.arbitration.org).

Further Information

More detail is outside the scope of these notes but, in short, the main areas for new business to think about, and obtain information on include :

- formalities involved
- business names
- planning permission

- taxation (on profits, local taxation, VAT, inheritance tax and capital gains tax)
- relationship with partners / co-directors
- employment
- health and safety

There is a lot of free advice available, both in leaflets and websites and one to one by telephone.

Companies House	www.companieshouse.gov.uk
HM Revenue & Customs	www.hmrc.gov.uk
Health and Safety Executive	www.hse.gov.uk
Government website	www.gov.uk/business

Department of Business, Innovation and Skills
www.gov.uk/government/organisations/department-for-business-innovation-skills

Northern Ireland
Regional Business Development Agency www.investni.com

Taxation

Various forms of taxation will need to be addressed and planned for in the typical small equine business :

Income Tax	-	for self or employees
Corporation Tax	-	if trading as a private limited company
Local Taxation	-	business rates will be applied once trading commences
VAT	-	you may wish, or be required, to register for VAT
Inheritance Tax	-	plan ahead
Capital Gains Tax	-	again, planning can reap considerable benefits

Obviously, advice will be required and space precludes giving basic information easily available elsewhere. The following notes simply highlight some of the issues particular pertinent to keeping horses and equestrian businesses.

Taxation for the stud farm and racing industry is a specialist area beyond the scope of these notes. However, both activities, if carried on as genuine businesses, can attract considerable tax advantages. There are particular complications where elements of a business attracting different treatment are combined, such as training and racing or stud farm and racing. These areas are outside the expertise of most 'High Street' firms and a specialist adviser should be sought.

Agricultural Status

A point of potentially major import in taxation planning, which may be overlooked, is that the vast majority of equestrian activities are not deemed to be agricultural.

This matter becomes particularly relevant where an existing farm diversifies to the extent that it is an equestrian business rather than a 'farm' and is then concerned to learn that it no longer enjoys the agricultural reliefs. The following common farm tax advantages will be lost :

- Capital allowances are given on farm buildings (currently 4% of cost per year on a straight line basis) - there is no relief of the capital expenditure on equine buildings in the trading account.
- Farmer's profit averaging for income tax purposes is not allowed for equine business.
- Agricultural status of property for inheritance tax purposes, whereby not only the farm but, very often, the farm house would be exempt from inheritance tax, is lost. However, if APR (Agricultural Property Relief is lost) then BPR (Business Property Relief) *may* be available so long as a genuine business is involved, although the house will not be included in the same way.

Note : The definition of agriculture is not consistent across all areas of legal application, planning and taxation. For example, it is much wider under the Common Agricultural Policy Reform provisions than for the tax purposes outlined above.

Income Tax Matters

Capital Allowances

Expenditure on capital items cannot be deducted from taxable profits in full along with day to day expenditure but for certain items of plant and equipment and vehicles (and some other categories) Revenue & Customs allow a deduction from taxable income up to a given percentage which varies according to the class of item and whether the item was acquired in the current year but can be up to 100%. In 2008 a new £50,000 Annual Investment Allowance was introduced. Allowances are typically 20%, on a reducing balance basis for the excess over this and for balances on the Plant and Machinery Pool brought forward. This area is becoming increasingly technical but careful breakdown of expenditure can result in considerable tax deductions.

Typical items available for capital allowances would be :

- show jumps
- fencing
- caravans for staff (so long as they are not static) or temporary accommodation, e.g. at competitions
- computer equipment
- certain additions to buildings, so long as they are not integral to the structure
- vehicles

When putting up new buildings, the expenditure will be able to be broken down by a tax adviser such that full use is made of available allowances for plant, nothing being available on the structure. If the item is moveable (e.g. partitions in *Jarrold v John Good* [1962]) or a *purposeful* structure rather than an actual building (e.g. grain silo in *Schofield v R and H Hall* [1975]) then it is more likely to be plant. The Revenue are tirelessly stringent on these matters and areas which might easily be considered more plant than building are currently disallowed, e.g. all weather riding surfaces.

Animals would not normally be considered as plant, for example farm animals are normally stock (or subject to herd basis elections). However, the Revenue & Customs Inspector's Manual CA21220 indicates that animals can be plant if they 'function as apparatus with which the trade is carried on … for example, it is likely that a horse used in a riding school or show jumping business … or a circus … is plant'. In practice this is rare and working animals are normally treated as stock. If the sale value is likely to be significantly lower than cost then stock treatment will probably be preferable.

Any equine business, but particularly higher turnover stud farms and those with racing interests, could usefully consult *Tolley's Equine Tax Planning* by Julie Butler (2003). Although somewhat out of date, this book is useful for specialist information. See also *Stanley : Taxation for Farmers and Landowners*, a regularly updated looseleaf book.

Wages and Salaries

Obviously, once employees are taken on there will be salaries to be paid. As an employer there will be the responsibility to deduct PAYE (i.e. the employee's income tax) and, once earnings are over the threshold for National Insurance. Revenue & Customs will provide copious notes on registering as a new business and have useful helplines and free workshops for new and small businesses and can be contacted on : www.hmrc.gov.uk.

Where family members are helping in the business, they should be formally paid to gain a valid deduction from trading income and to utilise their tax allowance. This can be a tax efficient means of funding teenage children, so long as the provisions of employing children regarding age, working hours (see www.gov.uk/child-employment) and minimum wage rules are not contravened and they are genuinely employed in the business.

Employed / Self Employed

It is important to note that if people are genuine employees then the liability on employers to account for PAYE and NI cannot be escaped or ignored by telling the worker that they are to be considered as self employed and to look after their own taxation. It will be a matter of fact as to whether they are employees and the Revenue look at such factors as whether they have any control over *how*, or *when* they carry out the work. Do they provide their own equipment? Do they have the choice of substituting someone else?

If no taxation of National Insurance has been paid, then both the employer and employee could face penalties for evasion and interest on unpaid tax.

There is no one deciding factor but land based industries are particularly targeted by Revenue & Customs as being especially prone to retaining persons on a self employed basis who, in reality, should be deemed to be employees.

Establishing the employment status of workers has implications for health and safety compliance, vicarious liability and employment protection, as well as taxation, so it is important that both parties are clear as to status.

THE RATING OF EQUESTRIAN PROPERTY

Introduction

The basics of business rates

All property which is not domestic is potentially liable for non-domestic rates (NDR), although there are some broad categories of property which have special exemptions e.g. agricultural land and buildings are 100% exempt from NDR under Schedule 5 of the Local Government Finance Act 1988, as amended by the Local Government Act 2003. In order for a property to be subject to NDR two things must be present: a unit of property on which to set a rateable value, known as a 'hereditament' and a person to pay the rates, usually the rateable occupier.

The rateable value that is set on the hereditament is based on the annual open market rent that a tenant would have been willing to pay for the property on 1st April 2008, assuming that the property is in a reasonable state of repair and that the tenant is responsible for repairing and insuring the property. The rateable value of all business properties is reviewed every five years. The latest revaluation came into force on 1st April 2010, with the publication of the new valuation list. The next revaluation will be based on the rental values prevailing on 1st April 2013, with the new list coming into force on 1st April 2015. The Valuation Office collect rental information through rent return forms sent out to businesses.

The actual amount of non-domestic rates paid by a business is not the same as the rateable value but is calculated by multiplying the rateable value by a figure known as the Uniform Business Rate (UBR) which is changed every year. The UBR for the 2011/12 tax year is 43.3p/£. The overall rise on the NDR raised on business property is not meant to be greater than inflation. A small business rate of 42.6 p/£ applies to businesses with rateable values of less than £18,000. In addition, businesses with rateable values of less than £12,000 will also qualify for Small Business Rate Relief. The effect of this is to give a 50% discount for businesses with rateable values of less than £6,000, this then reduces on a sliding scale for businesses with rateable values of more than £6,000 but less than £12,000. For 2011/12 SBRR has increased to 100% for businesses with an RV less than £6,000 and reduces on a sliding scale to zero for businesses with an RV of £12,000. This will potentially benefit many small stables and riding schools.

Specific issues relating to the rating of equestrian property

The rating of equestrian property is an interesting and sometimes 'grey' area as much equestrian property is not used for business purposes and even where it is used for business purposes it may be very closely related to an agricultural business which is exempt from business rates. There have also been some problems in the past in obtaining rental evidence for equestrian property, on which to base rateable values, although the view of the Valuation Office is that there will be sufficient rental evidence to enable valuations to be carried out on a rental basis for the 2005 list. (Valuation Office, 2004).

Stables attached to houses

A "yard, garden, outhouse, or other appurtenance", as defined by Section 66(1)(b) of the Local Government Finance Act 1988, will be considered domestic property if it belongs to or is enjoyed with living accommodation and will all be subject to Council Tax. This will apply to stables used only by the residents of the living accommodation, where the number of stables is in scale with the size of the living accommodation. If the stables were large in number and the living accommodation small then the living accommodation would be appurtenant to the stables and not vice versa (Valuation Office, 2000). Or, if a small private stables with living accommodation were used for breaking or training other people's horses or for dealing or as a professional competition yard it would technically be rateable. Use, size and proximity to living accommodation are the three important factors in determining whether stables are rateable (Valuation Office 2009).

Land used for grazing horses

Under Schedule 5 of the Local Government Finance Act 1988, as amended by the Local Government Act 2003 land used as "arable, meadow, or pasture ground only" is exempt from business rates. It does not matter what animals are doing the grazing whether it is cows and sheep, llamas and wildebeest, or horses the land will still be exempt. The Lands Tribunal case of *Young (VO) –v- West Dorset DC* (1977) confirmed this principle in relation to a riding stables with 79 acres of pasture land used for grazing horses. As well as showing that the land is used as pastureland it must also be demonstrated that the land is not "kept or maintained mainly or exclusively for purposes of sport or recreation". If there is a distinct schooling area, or there are many jumps on the land, then it is likely to fall into the sport and recreation category and lose its agricultural exemption. Also, if the land area is small and significant amounts of supplementary feeding are required it is likely to be considered that the horses are kept on the land, rather than grazing it and again the agricultural exemption will be lost, as horses are generally not agricultural animals these days.

Stables used for breeding and rearing horses (Stud Farms)

In 1987 the principle of whether breeding and rearing horses was an agricultural activity was tested in the House of Lords in the case of *Whitsbury Farm and Stud Ltd. –v- Hemens (Valuation Officer)* (1988). It was again confirmed that the land grazed by the horses was covered by the agricultural exemption but there was controversy over how the buildings used for breeding, rearing and keeping horses should be classified. The stud tried to argue that these too should be covered by the agricultural exemption. But, for that exemption to apply the buildings needed to serve the agricultural activity on the land and be ancillary to that activity and the Lords felt that the opposite was true and that the land was ancillary to what was going on in the buildings. There was also a question of whether the buildings were exempt because they were used for the "keeping and breeding of livestock" where "livestock" were defined as "any mammal or bird kept for the production of food or wool or for the purpose of its use in farming the land" but thoroughbred horses bred for racing where held not to fall within this category.

Stud farm buildings were therefore found to be rateable but the government soon was persuaded (by a strong equestrian lobby) to introduce a relief for stud farms. Under paragraph 2A, Schedule 6 of the Local Government Finance Act 1988 and the Non-Domestic Rating (Stud Farms) Order 2009 (SI 2009/3177), buildings in England occupied with at least 2 hectares of agricultural land, which are used for breeding and rearing horses, are given relief from rates on the first £4,200 of their rateable value attributed to those buildings (a lower figure applies in Wales). Any ancillary buildings on the stud that are not used for breeding and rearing (e.g. storage buildings), or land which is not agricultural (e.g. hard standing for horseboxes) are potentially still rateable. The definition of agricultural land is also slightly different, as the agricultural land needed to qualify for Stud Farm Relief may not be used exclusively for grazing horses. The conclusion to be drawn is that some studs with rateable values of less than £4,200 may still pay some rates on the parts that are not exempt or not eligible for relief. It is also important to note that the order is strictly interpreted to apply to studs and a distinction has been drawn between "rearing" and "keeping" horses so that the relief has not been available to livery yards.

Former agricultural buildings now used for equestrian businesses (apart from stud farms)

The following provisions do not apply in **Northern Ireland**.

In 2010 some of the principles explored in the *Whitsbury Stud* case were revisited in the Upper Tribunal (Lands Chamber), with regard to a tenanted farm which had diversified into DIY liveries. The case involved Miss Cheetham who had 17 DIY liveries on her 55 acre farm, which she held under an Agricultural Holdings Act 1986 tenancy. When the tenancy had been held previously by her father and uncle, their landlord had alleged a breach of a covenant in their lease requiring them to use the holding for "farming purposes only" and served a notice to quit on them. However the agricultural arbitrator who dealt with the notice to quit, did not uphold it as he held that the 30 liveries on the farm at that time, while used for recreation by their owners were used for farming purposes by the tenants. When Miss Cheetham contested her rating liability in the Valuation Tribunal, the Tribunal attached little weight to the *Whitsbury* case, arguing that a Pennine hill farm was not the same as a stud breeding racehorses, they also accepted that the horses were livestock, and said that the "*agricultural element of the farm was restricted to growing grass for hay & haylage and horses were a very necessary part of that process",* and they upheld Miss Cheetam's appeal in full. However, Jill Tulpin, the Valuation Officer, appealed further to the Upper Tribunal (Lands Chamber) and they allowed her appeal on three grounds:

1) That the stables were not agricultural buildings because they were not ancillary to the agricultural use of the land (they referred to the *Whitsbury* case and a House of Lords poultry case, *Eastwood v Herrod* on this point).
2) The livery horses were not agricultural livestock because their grazing of the land, their haylage consumption and their provision of manure was not the main

purpose for which they were kept, it was ancillary to their recreational use (they referred to the *Belmont Farm* case, a Town and Country Planning case from 1962 on this point).

3) The agricultural arbitrator's award was of no application as the interpretation and application of clauses in a tenancy agreement were quite different from the application of statutory provisions and his decision did not constitute a useful authority before a Valuation Tribunal.

This case has now reconfirmed the position that buildings used for housing horses on farms are not covered by the agricultural exemption for rates unless the horses housed in them are being used for farming the land or are being raised to produce meat or milk.

Other types of specialist equestrian property which is subject to business rates

The reasons why properties such as riding stables, livery yards and racing stables are rateable have hopefully now been established but there are some specialist types of equestrian property that have built up their own special body of case law.

Point-to-point courses

The House of Lords case, *Hayes (VO) –v- Lloyd* [1985] established that even a single day's racing on agricultural land may be rateable and not fall within the *de minimis* rule if there are permanent fences, disruption to agricultural activity, large numbers of spectators and significant financial returns.

Racehorse gallops

The Lands Tribunal case of *Forster and Others –v- Simpson (VO)* (1984) found the seasonal use of grass gallops rateable.

The valuation of equestrian property for rating purposes

Valuations are based on the annual rental value of the property, with the valuation date being 1st April 2008 for the current list. The valuation officers will use the rental evidence that they gather for equestrian property to come to an average rental value per standard loose box (usually 13.5m²). Adjustments will be made for individual premises, according to their location, the amount of competition and local demand for facilities, the age and quality of buildings etc. Valuations have previously been in the range £125 - £400 per box with additional amounts being added on for ancillary buildings such as offices, tack rooms, barns, outdoor and indoor schools on a £/ m² basis. The Valuation Office notes for the 2005 revaluation suggested figures in the £4-6/ m² range for indoor schools and 75p-£1.50/ m² for outdoor schools, there is likely to have been some upward revision for the 2010 list.

From October 2004 summary valuations have been available to businesses to show how the rateable value valuations have been arrived at. While these were not widely available for equestrian property in the 2005 list, for the first time with the new 2010 list, most equestrian properties do now have summary valuations available. The

Valuation Office has released this information in the belief that it will reduce the number of appeals.

What to do if you are unhappy with your rating assessment

If you think that your rating bill has not been calculated correctly e.g. discounts or reliefs have not been applied where appropriate. You will need to contact your local billing authority, usually your local council e.g. Telford and Wrekin District Council in this area.

If you think that your rateable value has been incorrectly assessed. In the first instance this should be taken up with your local valuation officer. If it is not resolved then you can appeal against the rateable value. The appeal is made to the Valuation Tribunal and is done by making a proposal in writing, to alter the rating list, by filling in an appeal form. These forms can be downloaded or filled in on-line at: www.voa.gov.uk/business_rates/appeals.htm

Appeals against the current list can be made at any time up until the new list comes into force , but there are limits on how far the changes can be backdated, for further details see the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005 (SI 2005/659).

Conclusions

Buildings used by equestrian businesses will usually be rateable, while land used for grazing horses will usually be exempt. There are some useful reliefs for stud farms and small business rate relief should also help many stables. When businesses are notified of their new rateable values, details should be checked carefully and appeals considered if necessary.

Northern Ireland : the system operates in broadly the same way as on the mainland.

Business rates are dealt with in the province by Land and Property Services (www.nibusinessinfo.co.uk/content/business-rates) and current poundages can be seen at their website, the district element of which vries from the lowest in Castlereagh to the highest in Moyle.

Properties are valued by Land and Property Services in the Department of Finance and Personnel. This was formerly the remit of the Valuation and Lands Agency. See www.dfpni.gov.uk/index/land-and-property.htm for further details.

A Hardship Relief Scheme for businesses was introduced in December 2005 under legislation passed in March 2004 - The Rates (Amendment) (Northern Ireland) Order 2004. This is intended to assist a business to recover from a temporary crisis, financial or otherwise, as a result of exceptional circumstances. Given that hardship relief is intended to provide assistance to enable a business or organisation to recover from temporary crisis some form of recovery plan will generally be required.

The appeal process against non-domestic rating bills will be specified in paperwork received. A form must be filed and appeals are heard by the Lands Tribunal under the Lands Tribunal and Compensation Act (Northern Ireland) 1964. Form CR20 is available on www.nibusinessinfo.co.uk/content/appealing-your-valuation.

VAT

For both livery yards and riding schools the issue of VAT needs advice based on individual circumstances. Matters are complicated by the fact that different parts of the business may be dealt with in different ways.

The basic rules are that :

Livery services (e.g. feeding, watering, mucking out, turning out, grooming, etc.) are standard rated.
Stabling i.e. the provision of the right to occupy a particular piece of land, is exempt.
Grazing is zero rated.

Following the Customs and Excise case against John Window in 1991 (in line with the European Court of Justice *Card Protection Plan* decision) the provision of livery services are now deemed to be exempt provided that are *ancilliary* to the provision of stabling. See Business Brief 2/2001 for further details.

For riding schools, the provision of lessons by the proprietor is differentiated from the provision of lessons by other staff. Proprietors (whether sole proprietors or partners) are VAT exempt whereas tuition provided by employers is standard rated. Where the proprietor supervises a trainee that counts as standard rated, per the case of *Judith Ann Gary and Sarah Louise Gary* (2002).

The threshold for compulsory registration, if your business is VATable, increases each year. For the current rates see www.hmrc.gov.uk/vat/start/register/when-to-register.htm. It can be prudent for businesses below the threshold to register voluntarily to allow the reclaim of VAT paid on purchases. However, as clients and customers are not likely to be VAT registered then the need to charge VAT on invoices is likely to be detrimental.

Also, be aware of the special VAT schemes operative if dealing in (rather than breeding) horses.

Up to date information is available at www.hmrc.gov.uk.

Tax Dispute Resolution

Whether the concern is with HM Revenue & Customs (governing Income Tax, Capital Gains Tax, Inheritance Tax, National Insurance and VAT, or the Valuation Office (dealing with business rating) detailed instructions for appeal accompany all assessments.

Health and Safety

Ensuring the safety of self, horses and others is simply good practice, bolstered by a sense of self-preservation and covered, at the very least, by principles of negligence should standards not be maintained and loss or injury ensues. However, when operating a business there is also a requirement to comply with various pieces of legislation, largely underpinned by the Health and Safety at Work, etc. Act 1974.

There is a general duty on employers to ensure, so far as is reasonably practicable, the health, safety and welfare of employees on and off the premises, and of visitors to the premises.

The Health and Safety Executive have a useful website with lots of information for new and small businesses (see www.hse.gov.uk) and there are also many leaflets available with coverage of specific areas. Some of the most useful and applicable to the equestrian business are to be found in the Agriculture section.

In **Northern Ireland** see, in addition to the above, www.hseni.gov.uk.

An assessed, online 'Health and Safety with Horses' programme is available through Warwickshire College (see www.hse.gov.uk/agriculture/horseriding.htm).

Again, it is an employer's duty to acquaint themselves with current provisions and practice but the following highlights the main areas to be addressed :

- the provision and maintenance of safe plant and systems of work
- ensuring the safe use, handling, storage and transport of articles
- the provision of training, information and supervision
- the provision, review and revision of a written statement of the policy of health and safety. This involves carrying out a risk assessment and formulating a policy for avoiding and mitigating those risks.
- compliance with the requirement to report certain accidents under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR)
- compliance with first aid requirements (see below)
- the compulsory display of the Health and Safety Law poster, available from the HSE

Needless to say, the horse industry sees many serious accidents each year, some of which are fatal. It is an employer's responsibility to see that, to cite an all too common example, riders are not over-horsed. It is not enough that a keen teenager says he is experienced - he needs to be closely supervised and assessed on a range of horses to ensure that the employer has clearly checked that he is capable. Similarly, formal training is required in operating certain equipment, for example tractors, trailers and the like.

Under 18's - note that there are additional requirements in terms of health and safety information, supervision and risk assessments when employing or otherwise dealing with under 18's. Be aware that additional guidance should be sought in this area. Note that the absence of a contract and calling young people 'club members' to try to get round employment legislation, may not be adequate protection in the event of an accident, to the young person or a third party, when an investigation reveals that they are, in fact, essentially employees.

Corporate Manslaughter

Until 2008 companies could only be prosecuted in England and Wales for manslaughter if the directors and superior officers of a company could be deemed to be 'the company' and culpable of the crime (doctrine of identification). In June 2003 it was ruled in Scotland that the company could be prosecuted for culpable homicide without this sometimes difficult test.

The Corporate Manslaughter and Corporate Homicide Act has been operative from April 2008. This makes it easier to convict an organisation for the death of an employee caused by the organisation's gross lack of care thus a death in the course of employment is more likely to attract this more serious charge of corporate manslaughter, in addition to or instead of charges under health and safety legislation. Any lack of care ascribable to a particular individual, rather than corporate systems, may be charged against the individual concerned.

General Guidance

The following guidelines about the assessment and reduction of risk in equine yards has been adapted from the Health and Safety Executive booklet *Health and Safety in Horse Riding Establishments*, now out of print but it is understood that a new edition is in the pipeline. A detailed work well worth looking at would be Mike and Karen Sinclair-Williams's *Health and Safety Guidance for Inspections of Horse Riding Establishments and Livery Yards*, available to download from the Chartered Institute of Environmental Health website :
(www.cieh.org/library/Knowledge/Health_and_safety/guidancelivery_3.pdf).

Manual Handling

Manual handling accidents account for almost one third of injuries reported to enforcing authorities. In outline the approach should be :

- Avoid manual handling activities where there is a risk of injury, so far as is reasonably practicable.
- Assess and reduce the risk of injury from the remaining manual handling activities taking into account the following :

Task	Can the work, e.g. moving bales of hay or watering horses, be re-organised to reduce manual handling?
Load	Could handling aids, bridles etc. be used to take account of the difficulty of handling animals?
Working environment	Are storage systems and practices optimised? Are floors even and in good condition?
Individual capability	E.g. age, fitness, maturity and experience of staff.

- Provide training to develop good handling techniques .
- Ensure safe working practices e.g. in the stacking of bales.

Hazardous Substances / Micro-organisms

COSHH (Control of Substances Hazardous to Health) assessments may be needed for disinfectants, detergents, insecticides, veterinary products, harmful micro-organisms and dusts. Detailed guidance can be found in the COSHH element of the Health and Safety Executive website - www.hse.gov.uk/coshh/.

Dusts. Known respiratory sensitisers found in riding establishments are dusts found in horses' coats and moulds and fungal spores from hay, straw and animal feeds. COSHH assessments may include reference to ventilation, working practices and suitable respiratory protective equipment (e.g. dust respirator).

Zoonoses (diseases transmissible from animals to humans). Steps should be taken to protect employees against the possibility of ringworm or leptospirosis (such as Weils Disease). These may include protective clothing, good standards of personal hygiene, pest control and the provision of information / instruction to staff. I provide my students with a small card to keep in their wallets which they can give their doctor in the event of vague symptoms - worth thinking about particularly for younger employees who are more likely to forget verbal information :

The holder of this card is a student / employee of ... and works with farm animals / horses. He / she may have been exposed to an animal related disease including :

brucellosis	*orf*	*salmonella*
enzootic abortion	*ringworm*	*tuberculosis*
leptospirosis	*pasteurella*	

Tetanus. This is potentially present in droppings and manure heaps. All staff in contact with horses should be vaccinated; good personal hygiene is also essential.

Pesticides. Staff using pesticides must be competent and have received adequate information and training. If 'agricultural' pesticides are used a Certificate of Competence may be required - see www.hse.gov.uk/pesticides/.

Horses

Horses are large, heavy and unpredictable animals but risks can be reduced by taking the following steps :

- Providing adequate training for staff.
- Ensuring competency of handling through training, qualifications and experience.
- Observing recognised methods of horse restraint.
- Providing suitable personal protective equipment (safety footwear, protective headgear, etc.)
- Good standards of general horse handling (particularly when loading / unloading and handling in restricted areas, etc.).
- Extra care being taken with children and novices and observing safe systems of work with all groups.

Environment and Welfare

The Workplace (Health, Safety and Welfare) Regulations 1992 cover all workplaces. Relevant requirements (amongst others) will include :

- adequate ventilation and lighting
- adequate construction standards for stabling
- safe access to hay lofts
- safe visitors' areas
- adequate staff facilities (toilets and washing facilities, etc.)
- good standards of housekeeping to reduced the risk of trips and falls

Electricity

Electrical hazards may arise in particular due to dampness, physical damage, misuse and incorrect design or installation. It is recommended that the fixed system is inspected every 5 years and that all electrical appliances are examined / checked at a frequency appropriate to the risk.

Some local councils will have this as a condition of the riding school licence.

Machinery

All machinery and safeguards should be kept in good condition and be serviced / maintained in accordance with the manufacturer's instructions.

Particular hazards are associated with the use of tractors and, in particular, power take-off (PTO) driven machines. Training of tractor drivers and guarding of the PTO and PTO shaft and other dangerous parts of machines is essential.

Steam / water pressure cleaners pose a risk of electrocution and / or burns and require specific precautions including the use of a residual current device (RCD) or the equivalent.

See the HSE Approved Codes of Practice on the Safe Use of Work Equipment. Provision and Use of Work Equipment Regulations 1998, Manual Handling, Manual Handling Operations Regulations 1992 (as amended) and Personal Protective Equipment at Work Regulations 1992.

Health and Safety Checklist - horse riding establishments :

1.	Have you carried out all relevant safety assessments		
	COSHH	YES	NO
	Manual Handling Operations	YES	NO
	Risk assessments	YES	NO
2.	Have you consequently established safe working practices and procedures?	YES	NO
3.	Do you inform, instruct and train your employees and is this documented/recorded?	YES	NO
4.	Do you undertake regular audits/checks for safety covering matters such as housekeeping, electrical safety, condition of premises in general, tack, protective clothing, machinery, first aid facilities etc?	YES	NO

Breach of health and safety provisions is a criminal offence which can result in fines or even prison. In cases of fatality, in addition to health and safety offences, the proprietor may find themselves charged with manslaughter, carrying a maximum (albeit unlikely) sentence of life imprisonment.

See HSE website for guidance on risk assessments, including worked examples.

Contact the Health and Safety Executive (www.hse.gov.uk) for advice or to initiate an investigation.

First Aid

It is a requirement under the Health and Safety (First Aid) Regulations 1981 for all employers, not just those with 5 or more employees, and including the self-

employed, to make satisfactory provision for first aid, in the form of training, information and equipment.

There are no statutory requirements as to the number of trained first aiders but the recommendation is at least 1 appointed person per 50 employees with the overall decision to be based on the nature of work and levels of risk involved, size and location of workplace, distance from medical facilities and hours of work.

Further guidance on first aid at work is given in the HSE publication *First aid at work : Your questions answered* (www.hse.gov.uk/pubns/indg214.pdf).

Employment

Written Contracts

Contracts, in the main, do not have to be written down to be valid and employees will certainly have statutory rights without a written contract, e.g. minimum wage (see below) and notice periods. However, it is beneficial for both parties to be clear on terms and templates and guidance on contracts of employment are available for employers from the BHS and the ABRS or from ACAS at www.acas.org.uk/publications/gol.html.

Minimum Wage

Minimum wages levels under the National Minimum Wage Act 1998 are regularly updated so check at www.gov.uk/national-minimum-wage-rates for the latest figures. Some points to bear in mind are :

- There are bands of rate for 16 - 17 year olds, 18 - 21 year olds and those aged 22 and over.
- Benefits in kind are not included in assessing the wage you are paying other than living accommodation which is included at a set maximum per week, considerably less than the market value.
- Keep careful records.

Hours of Work

Under the Working Time Regulations 1998 there is a basic provision that working hours should not exceed 48 hours in a seven day period (calculated as an average over a 17 week reference period). Employees can voluntarily agree not to be limited to the 48 hour week which would not be uncommon for larger equine businesses, bearing in mind many staff live in and may be on call for long hours. They cannot, of course, be coerced into opt out agreements. Smaller businesses will tend to have more part time

workers and so may not have an issue. There are also requirements as to rest periods and paid holiday.

It should be noted that there is currently a consultation process in progress regarding, among other things, working time opt out, reference periods of averaging hours, and excluded industries - see :
www.gov.uk/browse/working/contract-working-hours for up to date information.

Children

The hours and conditions of work for school age children are contained in the Children and Young Persons Acts 1933 and 1963 and the Children (Protection at Work) Regulations 1998. There may also be local authority bye-laws in your areas.

At what age can children work?

Children may do light work (work which is not likely to be harmful to the safety, health or development of children and is not harmful to their attendance at school or participation in work experience) from the age of 13 years until they are no longer of compulsory school age. Children under 13 years old cannot legally be employed. However, a number of stables have retained young helpers by treating them as trainees, sometimes with a subscription paid by the child for membership of a club. The BHS plan to put out a leaflet on this matter in the near future. Be aware that for health and safety and insurance purposes if children are effectively working as part time employees, calling them by a different name will not be effective protection against lack of insurance, training or supervision.

Employment permits

Employers are required by law to register any children who work for them (whether paid or unpaid) with the local authority. An employment permit may then be issued for the child to carry whilst working. An employer can be prosecuted for employing a child outside these terms. In addition, the insurance which the employer must have for his employees may not be valid.

Employment may only take place between 7am and 7pm.

Hours of work for children aged 13 and 14 years

- 2 hours on Sundays
- 2 hours on school days (either one hour before and one hour after school, or two hours after school)
- 5 hours on Saturdays
- Maximum 12 hours per week during term time
- 5 hours daily during school holidays but not to exceed 25 hours per week

Hours of work for children aged 15 years until they are no longer of compulsory school age

- 2 hours on Sundays
- 2 hours on school days (either one hour before and one hour after school, or two hours after school)
- 8 hours on Saturdays
- Maximum 12 hours per week during term time
- Eight hours daily during school holidays but not to exceed 35 hours per week

Any child employed must have a rest break of not less than one hour following four hours of continuous employment and during the year have at least two consecutive weeks in the school holidays which are free from work.

Tell your insurer about any children on your yard as employees, club members, etc. They will let you know whether, under your particular policy, they need names or just numbers. Do ***not*** mis-state the numbers - in the event of a claim you will find your policy ineffective if there are any inaccuracies in information.

Advertisements

The advertising signage which can be erected, either with permission or without, is somewhat complex. Some adverts are excluded from control, e.g. relatively small ones attached to buildings, those at ground level or some temporary signs. Full details are available in the leaflet *Outdoor advertisements and signs : a guide for advertisers* https://www.gov.uk/government/publications/outdoor-advertisements-and-signs-a-guide-for-advertisers.

All other signs will need planning permission under the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended) and contact should be made to the district council, or National Park authority if operating within a National Park.

Data Protection

The Data Protection Act 1998 aims to protect the individual's right to privacy. The Act is of potential relevance to anyone who holds information on others in electronic or, in certain circumstances, manual form.

What do I need to do?

Small businesses often hold information about individuals, i.e. employees, suppliers, clients or other members of the public. Under the Data Protection Act 1998 you must :

- make sure that you and all your staff follow the **eight enforceable data protection principles**. These principles are central to the DPA, and everyone who handles personal information must abide by them.

- check whether you have a duty to 'notify', i.e. tell the Information Commissioner certain details about your processing.

Not everyone has to notify and if you only process personal information for core business purposes such as your own marketing, staff administration and accounting, you may not need to notify, but you should check and the Information Commissioner's website has a simple self-test section which takes a couple of minutes to complete and will ensure that you are within the rules : www.informationcommissioner.gov.uk.

The eight data protection principles

Personal information must be:

1. Fairly and lawfully processed.
2. Processed for specified purposes.
3. Adequate, relevant and not excessive.
4. Accurate, and where necessary, kept up to date.
5. Not kept for longer than is necessary.
6. Processed in line with the rights of the individual.
7. Kept secure.
8. Not transferred to countries outside the European Economic Area unless there is adequate protection for the information.

Access to information

Individuals have a right under the DPA to have a copy of the information held about them on computer and in some manual filing systems - the right of subject access. Thus your employees or clients can ask about information you hold or you can ask about information held about you by other organisations.

If you do receive a subject access request, then you must deal with it promptly and in any case within 40 days of the date of receiving it. You should send the individual a copy of the personal information you hold on them, and certain other details of your processing. You can charge a fee of up to £10 for responding to a request.

What if I fail to comply with DPA rules?

Breach of the DPA is a criminal offence, punishable by a fine. Information about Data Protection Act disputes can be obtained from the Information Officer : (www.informationofficer.gov.uk).

Data Protection and the National Equine Database

National Equine Database (NED) information on horses or ponies is covered by the DPA 1998 in that it stores information relating to assets owned by individuals. Thus, government or equine organisations must inform owners about any intention to collect data for the NED and how that information will be used. However (per Schedule 1 DPA 1998) it is sufficient to inform publically, e.g. on DEFRA website, in equine publications or newsletters.

The NED information is being passed on to comply with Horse Passport provisions and for other interests such as the requirement for economic strategic planning and developments in the equine sector to be built upon reliable data sources (DEFRA, 2004).

Dispute Resolution

It should always be the aim to settle disputes, of whatever nature, out of court and in a way which allows good relations to be sustained and this has been the aim of recent changes in civil procedure. Per the Lord Chancellor's Department in the 1999 Consultation Paper, *Alternative Dispute Resolution* : 'For most people most of the time, litigation in the civil courts, and often in tribunals too, should be the method of dispute resolution of last resort.'

There may, however, be situations where parties fail to agree and the various courses of dispute resolution have been dealt with under the appropriate subject matter.

The method of resolution most likely to be encountered, short of full blown court procedure, is arbitration. This is a procedure whereby both parties agree to let a third party, the arbitrator, decide the matter. Many contracts include an arbitration clause specifying that this method will be used, and such a clause is recommended in partnership agreements and horse loan agreements.

Dispute Resolution in the Workplace

All employers have a duty to have a grievance and disciplinary procedure policy. The aim of the legislation* is to encourage the internal resolution of disputes. See the ACAS website (www.acas.org.uk) for further details. The appointment of independent specialist mediators or arbitrators through ACAS (www.acas.org.uk) or the Chartered Institute of Arbitrators (www.arbitration.org.uk) may be made.

Failing resolution internally or through arbitration, employment issues, e.g. unfair dismissal, discrimination or contractual disputes, are dealt with by Employment Tribunals (www.justice.gov.uk/tribunals/employment). The procedure is relatively simple to administer independently but legal advice should be sought on all of these areas. As an employer, the potential fines are substantial. It is thus important that inadvertent breaches of employment provisions are not made.

* Employment Act 2002, the Employment Act 2002 (Dispute Resolutions) Regulations 2004 and the Employment Act 2008.

Equine Events

Disputes about event organisation / participation could, of course, fall within contractual or negligence issues with the consequent mechanisms for redress. However, in the absence of criminal matters, personal injury or some other reason for direct recourse to the courts, the governing body of the event, be it The Pony Club, BSJA, British Eventing, or whatever, should be informed. All have their own codes of practice and systems for dealing with complaints and disciplinary matters.

Appeals may, under certain circumstances, be made to the British Equestrian Federation.

Appendices

sample agreements
- **loan**
- **full livery**
- **grazing licence**
- **partnership**

cases
statutes
further reading
glossary
useful contacts

SAMPLE LOAN AGREEMENT

Plain text should be included, italics shows where amendments are needed, sample clauses you may wish to include or additional explanation

The Owner and the Loanee should each retain a signed copy of the agreement.

The sample loan agreement prepared by the British Horse Society and that in Gilligan (2002) have been referred to and modified in the following and are acknowledged accordingly.

AGREEMENT FOR LOAN OF HORSE / PONY

This agreement is made between :

…….. (name)
('The Owner')

of …… (address)

and

……. (name)
('The Loanee')

of …… (address)

in respect of an in consideration of the loan by the Owner to the Loanee of the horse

…….[*name of horse*] described below.

This Agreement is an Agreement for loan and shall not be interpreted or construed as an Agreement for permanent transfer or any other purpose. It is understood by the Loanee that that at no time is he the registered Owner of the Horse and under no circumstances whatsoever is he permitted to loan, lease or sell the Horse to any third parties.

[*Provision for Loanee to have first refusal if the horse is sold can be included if desired.*]

The loan shall be for a period of ……..('the loan period').

[*Provision for an option to renew can be included.*]

Prior to commencement of the loan period, there will be a probationary period of 28 days subject to the terms and conditions of this agreement and if after expiry of this probationary period the horse has proved suitable in the opinion of the Loanee, for the purpose of the loan, then the loan period will commence.

If the horse does not prove suitable, in the Loanee's opinion, then the Loanee will return the horse to the Owner, during the probationary period, at the Loanee's expense [*or at the Owner's expense, as agreed*].

The Loanee's opinion will be final.

The probationary period will commence on …….. [date].

The loan will terminate as follows :

(i) Upon either party giving …….. days notice in writing [*or by telephone / in person, as agreed*] to the other, such notice to take effect from the second day after the date of the notice [*or immediately, if verbal*].

or

(ii) Immediately, if either party is in breach of any of the terms and conditions of this agreement, save that if the breach is capable of remedy, either party can require the other to remedy any such breach by giving written notice of the breach, the action required to remedy it and the time by which the action must be performed. If the breach is so remedied, then the agreement will resume from that point.

or

(iii) At the end of the specified loan period, if any, without the need for any further notice.

or

(iv) As may be specified in this agreement on the occurrence of a specific event.

The Loanee shall be responsible for transporting the horse back to the Owner on termination and for the costs involved however termination occurs. [*Or, provision as to removal and related expenses as agreed.*]

The Horse

Name
Age
Height
Sex
Breed
Breed Registration no.
Freeze mark
Passport no.
Colour and description
Any other identifying marks

The Horse …… [*full name*] known as …… [*short name if relevant*] is as described and is warranted sound, free from any stable vices or other habits, good to box, shoe, clip, catch and in traffic, of good temperament to handle and ride and suitable for the purpose of the loan save as set out below :

……

[*Any exclusions to warranty as appropriate, e.g. the Horse has COPD ('Heaves') and is not to be bedded on straw, is liable to be unpredictable in traffic, etc.*]

The Owner warrants that he has hereby disclosed all known unsoundness, pre-existing health and / or dental conditions, vices, defects, habits or specific characteristics of the horse to the best of his knowledge and belief and the Loanee is taken to accept the horse with those so disclosed as above but with no other.

The Loanee reserves the right to require the Owner to remove the horse at any time at the Owner's expense should the horse prove not to be as described above and in particular if it is unsound, has one or more vices, is carrying any infectious disease or illness or is, or becomes, dangerous, in the opinion of the Loanee to ride or handle.

Tack and Equipment

The Horse is loaned with tack and equipment as set out below :

Saddle [*state make, size, colour, condition, value and any security marks*]
Bridle [*state make, size, bit, colour, condition, value and any security marks*]
Rugs [*State quantity, size, type, colour, repairs, etc*]
[*Anything else that you give with the horse - itemise each piece and indicate condition and append photographs if desired.*]

Such tack and equipment is and remains the property of the Owner and will be returned to the Owner at the termination of the loan in the same condition as far as possible, subject to fair wear and tear.

In the event of loss, damage or the item wearing out then a replacement item of the same or similar quality and value if purchased new should be provided by the Loanee on return.

All items purchased by the Loanee during the period of the loan not by way of replacement shall remain the property of the Loanee.

The Loanee agrees with the Owner that in consideration of the Owner loaning the Horse under this agreement he will :

1. Ensure that the Horse shall only be ridden and managed by ……

2. Keep the Horse at …….. or such other premises as are appropriate at the discretion of the Loanee save that the Owner will be given …….. days notice of any new address except in an emergency when the Owner will be notified as soon as possible.

3. Be responsible for all the Horse's day to day care, including the provision of an adequate diet, stabling, bedding and grazing and take all reasonable care to maintain the horse in good condition, and for all costs involved in doing so.
   [*Specify any special bedding or regimes required and the responsibility for the cost thereof, e.g. must be stabled in the winter at night, requires restricted grazing in the summer, requires hay to be soaked or anything similar*.]

4. Have the horse regularly and appropriately shod by a suitably qualified farrier of the Loanee's choice at the Loanee's expense.

5. Keep the Horse regularly and appropriately vaccinated and wormed according to the Loanee's programme and keep a record of the same, at the Loanee's expense.

6. Allow the Owner access to the horse at the address specified in 2. at any reasonable time in order that Owner may check that the horse is in good health.

7. Is responsible for ensuring prompt and required veterinary treatment by a registered and qualified veterinary surgeon at all times and the liability for payment of the aforesaid veterinary treatment lies solely with the Loanee. The Loanee will notify the Owner if the horse suffers any serious illness or injury and will notify the Owner in advance if possible of any requirement for the Horse to have surgery or general anaesthetic.

8. Will be responsible for ensuring that the horse is fully insured for veterinary treatment, third party liability, travelling, saddlery and tack, etc. at all times for its full value and the liability for payment of the aforesaid insurance lies solely with the Loanee. If the Loanee fails to insure the Horse and its effects the Loanee assumes full liability for any loss or damage, including 3rd party legal liability.
[*The Owner may have to arrange the insurance and reclaim the premium from the Loanee, consult your insurer.*]

9. Will not be responsible for the provision or cost of any modifications to the premises where the horse is kept and / or systems necessary to comply with the terms of any insurance policy taken out or held by the Owner and the cost of the same will be the responsibility of the Owner.

10. Will not permit the Horse to take part in any of the below mentioned activities under any circumstances whatsoever.
[*List any activities which you do not want the horse to do or are not covered by insurance, e.g. polo, hunting or drag hunting. If a mare or stallion, you will want to add details about breeding use.*]

11. It is understood by the Loanee that horse care and riding carry their own inherent risks and at no time can the Owner of the Horse be held responsible for anything at any time [*except as detailed below*]

    e.g. *If the Loanee is going on holiday the Owner may agree to look after the horse.*

    It may be agreed to go 50 / 50 on vaccinations / shoeing.

    It may be agreed that the Owner will bear the expense if the horse ruins his rugs in the fields, as rugs are not normally covered under saddlery and tack insurance.]

12. The Owner agrees that if a veterinary surgeon advises immediate slaughter of the Horse to prevent further suffering in the case of severe injury and the Owner cannot quickly be contacted the Loanee may give permission to the veterinary surgeon on the Owner's behalf.

Signed

…….....
[*Owner's name printed here*]

Witnessed by:

.....
[*Witness's name and address here*]

…….....
[*Loanee's name printed here*]

Witnessed by :

…….....
[*Witness's name and address here*]

[*Ideally, there should be two witnesses - one known to either party. They should witness the signature and their addresses should be included.*]

SAMPLE FULL LIVERY AGREEMENT

Plain text should be included, italics shows where amendments are needed, sample clauses you may wish to include or additional explanation.

Both parties should retain a signed copy of the agreement.

The sample livery agreement in Gilligan (2002) has been referred to and modified and is acknowledged accordingly.

This is an example livery agreement only. Ensure that your own livery agreement reflects your personal requirements and that you are happy to comply with its terms.

FULL LIVERY AGREEMENT

Full Livery Agreement

This agreement is made between :

…….. (name)
('The Livery Stables')

of …… (address)

and

……. (name)
('The Owner')

of …… (address)

This Agreement is an Agreement for Full Livery of the horse belonging to The Owner as set out in the annexed Schedule 1 and shall not be interpreted or construed as an Agreement for any other purpose.

The Owner agrees to abide by the conditions of this Agreement and any other reasonable rules, regulations, terms, conditions and the like that may be from time to time required by The Livery Stables, including all health and safety regulations and / or legal requirements which must be fulfilled by The Livery Stables. Notice of these are currently posted at [*location of information posters at yard*] and the Owner's attention is hereby drawn to them.

Under this agreement, the Owner agrees to pay a livery fee of £…… per horse every 4 weeks, due and payable 4 weeks in advance.

In the event of non payment on the due date, 4 weeks notice will be given by The Livery Stables. If the horse(s) is not removed by the end of the notice period, The Livery Stable hereby gives notice that the rights of disposal to recover monies owed may be adopted.

The livery fee will be reviewed annually on the ……. and may be subject to increase of which 4 weeks' notice will be given.

The livery period is subject to a 4 week probationary period commencing on …… and ending on ……..

Termination

4 weeks notice from either party is required to be given in writing in order to bring the livery period to an end except where otherwise stated in this Agreement.

The Livery Stables also reserve the right to terminate this Agreement immediately where the terms of this Agreement have been breached by The Owner and not rectified within 14 days of being asked to do so, or in cases of cruelty to any animal whether belonging to The Owner or not, verbal or physical abuse of any person or animal, theft or dishonesty by The Owner or anyone acting on their behalf.

In consideration of this and provided the conditions of this Agreement are kept, The Livery Stables will provide full livery services to The Owner as follows :

1. Stables

- All horses are kept on shavings, which will be provided by The Livery Stables to the extent of two bales of shavings per week. If the livery requires special shavings, i.e. dust extracted, or more than two bales per week, then these will have to be provided by The Owner at their own expense.

- Daily mucking out and skipping out of the horse's stable to a clean condition and weekly clearance of all wet shavings.

- The Livery Stables will provide and maintain the stable allocated to the horses but any damage caused by The Owner's horse must be repaired to a good standard by The Owner at his or her expense as soon as possible after the damage has occurred and at the latest 14 days after the damage provided that the damage is not presenting a danger to any person or animal likely to be present on the yard. The Livery Stables reserve the right to repair the damage themselves and to bill The Owner for work and materials. Where a horse continually damages stables then The Owner may be asked to consider keeping the horse at grass if this would be available at the discretion of The Livery Stables, but where this is not an option then The Owner may be asked to move. The Livery Stable cannot guarantee that any particular stable will be available and The Owner may be required to move stables where necessary.

2. Feeding

- Feed will be provided to the extent of two feeds per day fed at the rate of …… or at the discretion of The Livery Stable as appropriate, using [*specify yard standard feed*], unless alternative arrangements are agreed. If the horse requires extra or different feed, supplements or additives, these will have to be supplied at The Owner's own expense and full details of feeding regime are to be supplied to The Livery Stable.
- If The Owner requires the horse to be fed at specific times, e.g. due to show commitments, then 48 hours' notice is to be given, except that The Livery Stable will not be able to be responsible for feeds to be given before 7am or after 8pm and The Owner must in those cases make their own arrangements, including arranging access to the yard and feed rooms, with The Livery Stable.

- Hay or horsehage / haylage is provided in the discretion of The Livery Stable appropriate to each individual horse's requirements divided into two nets given one in the morning and one in the evening. The Owner must provide two small-hole hay nets and replace as necessary. If anything other than hay or horsehage / haylage is required this must be provided by The Owner at his or her own expense.

3. Water

- Water is provided by The Livery Stable, but care is required not to waste water or use water unnecessarily as the water is metered.

4. Fields and Grazing

- Fields, grazing and fencing (including electric fencing) will be provided and maintained by The Livery Stable. Water will be provided by The Livery Stable for the fields. The Owner to provide at least one good quality head-collar and lead rope. The Owner to state whether to be left on or off whilst out. On / Off.

- Horses will be turned out daily where possible providing weather conditions are suitable. The decision on this will be made by The Livery Stable. Winter turnout will be restricted to small winter paddocks which are liable to become muddy, or into the arena for up to one hour only per day.

- In summer, horses can be turned out all day and night provided this is appropriate for the horse and there is space, but there will be no reduction in livery cost if this is required.

- In any event horses will be left out as long as possible and can be brought in by The Owner or by arrangement with The Livery Stable. The Livery Stable will in any case bring in horses at their discretion where appropriate.

- Horses are turned out in groups of mares and geldings where possible. The Owner will be responsible for ensuring that their horse is safe to turn out with other horses and if they are not then The Livery Stable should be notified prior to the commencement of the livery agreement as it may not be possible to accommodate such horses. Any

special requirements should be discussed with The Livery Stable prior to commencement of the livery agreement.

- Horses' legs will be washed off where necessary on being brought in.

5. Arena

- The Owner is entitled to use of the arena but must exercise consideration to other riders already in the arena or wishing to use the arena. The arena may be used during private lessons subject to the discretion of the instructor.

- The Livery Stable will be responsible for the lights in the arena but in winter (between ……..…… and ……..……) use of the arena lights will not be allowed before …….. or after ……

- When using the arena all care must be taken to use the arena safely and proper and appropriate equipment must be used. When riding or lunging, an approved safety riding hat or skull cap must be worn together with proper riding boots.

- Other riders must be warned before entering and leaving the arena. The arena gate must be closed when the arena is in use.

- Horses' feet must be clean before entering the arena and must be picked out after leaving the arena into the skip, provided.

- All droppings must be cleared.

- Jumps, trotting poles etc. must be put away after use unless specifically required by another rider.

6. Yard

- All areas of the yard must be left in a clean and tidy state with all droppings cleared up, the area in front of the horse's stable swept and all belongings put away.

- All belongings and equipment must be clearly labelled and kept tidily. You should not use anyone else's equipment without their express permission and all equipment must be returned promptly if borrowed.

- Tack must not be left at the yard unless The Livery Stable are responsible for exercising your horse in which case it will be kept at the main house, but no responsibility can be taken for loss or damage.

- Horses' feet must be picked out before leaving the stable to avoid shavings on the yard.

- The yard gate must remain closed at all times.

7. Rugs

- The Owner is responsible for the provision and maintenance of suitable summer, winter and stable rugs where used.

- The Livery Stable will be responsible for putting on and taking off rugs where they are responsible for putting the horses in and out but not otherwise.

8. Worming

- On arrival, new horses must be wormed using the appropriate product for the time of year and kept in for 24 hours thereafter.

- After the initial worming, the Livery Stable worming programme for the whole yard must be followed. Wormer can be supplied by The Livery Stable at cost to The Owner but will require 1 week's notice prior to worming date together with the cost of the wormer to enable ordering. Alternatively, The Owner can supply the wormer but it must be the same product as used by the yard. If The Owner has neither ordered nor provided wormer at the time worming is due, The Livery Stable reserve the right to worm the horse and charge the owner accordingly.

9. Shoeing

- All horses must be appropriately shod or have their feet trimmed every 6 weeks or as advised by a qualified and registered farrier.

- The Livery Stable have a farrier call regularly, but The Owner may use an alternative qualified and registered farrier if required. In either case, the farrier can be paid direct by The Owner, or the farrier's fee can be left with The Livery Stable to pass on. If no money is left to pay the farrier, the horse will not be shod or trimmed.

10. Insurance

- All horses must be fully insured and a copy of the insurance certificate lodged with The Livery Stable. It is the responsibility of The Owner to ensure that all terms and conditions of the insurance policy are met and complied with and receipt of the copy policy does not imply that The Livery Stable have any notice of the terms and conditions of the policy nor that they will take steps to comply with them. It is The Owner's responsibility to bring any particular term or condition to the attention of The Livery Stable where this may require The Livery Stable to take any actions. For the avoidance of doubt, The Owner should check the terms and conditions of any insurance policy before entering into it to ensure that they can comply with them.

11. Veterinary

- All horses must be fully inoculated at least against influenza and tetanus and it will be the responsibility of The Owner to ensure that these are kept up to date.

- All horses must be registered with a suitable veterinary practice and the name, address and telephone numbers of the vet lodged with The Livery Stable. It is The Owner's responsibility to ensure that the horse receives proper veterinary and dental care.

- The Livery Stable reserve the right to call out a vet of their choice at their discretion where necessary, particularly in cases of severe illness, injury, infections, or suffering, but responsibility for the fees will be The Owner's. In emergency situations or on veterinary advice, although all reasonable efforts will be made to contact The Owner first, The Livery Stable reserve the right to authorise surgery and/or the humane destruction and disposal of the horse by cremation whether or not this complies with insurance requirements. The fees will be the responsibility of The Owner.

12. General

- Where any fees, bills or invoices, whether rendered by The Livery Stable or otherwise are due and payable, these must be paid within 7 days of the date of the fee note, bill or invoice or as requested by the sender of it. Where there is persistent failure to pay monies owing in the discretion of The Livery Stable, the livery agreement will be terminated on 7 days' notice.

- In the event that the livery fees or any additional sum due under this Agreement remains unpaid for more than three months after they first became due, the Owner agrees that The Livery Stable may sell the horse, provided that written notice has been given to the Owner (at the address set out at the beginning of this Agreement) of this intention to sell, at least seven days before sale. From the monies received from the sale of the horse, The Livery Yard may retain such sums as cover of any unpaid sums due under this Agreement and the reasonable costs of sale. Any remaining money shall be returned to the Owner within thirty days of sale.

- While every reasonable care will be taken, neither The Livery Stable, nor any of its employees or staff, servants or agents, will be responsible for any loss, damage, injury or death of any person, animal or object, howsoever caused save for their liabilities in English law.

- The Livery Stable will not be responsible in any way for the actions of any of their pupils even where this results in loss, damage, injury or death to The Owner. It will be The Owner's responsibility to take up any cause of action with the person concerned individually.

- Schedules 1, 2 and 3 annexed form part of this Agreement.

13. Arbitration

- The Livery Stable and The Owner agree that any disputes or complaints arising with regard to the terms and conditions of this Agreement or in the way in which the terms and conditions have been interpreted or carried out should first try to be resolved by the complainant first raising the matter in writing within ……. days of the dispute or complaint arising, specifying the grounds of the dispute or complaint and specifying the remedy required.

- If the matter cannot be resolved in this way, then it shall be referred to an independent veterinary surgeon or an independent Fellow of the British Horse Society (whichever is more appropriate) nominated by the British Horse Society at both parties' request to act as arbitrator. Such referral shall be made within 14 days of the dispute or complaint remaining unresolved.

- The arbitrator's decision will be final and binding and both parties agree to accept and abide by the arbitrator's decision.

- The arbitrator's fees and expenses shall be borne in equal shares by the parties who shall have no further claim against each other whatsoever in respect of those fees or expenses, otherwise each party shall be responsible for their own costs of such arbitration and decision.

We understand and agree to the terms and conditions of the livery Agreement as set out above and that it replaces and supersedes any previous agreements whether made orally or in writing whether by The Livery Stable, its employees or staff, servants or agents or anyone acting or claiming to act on its behalf.

Signed ……
Dated ……

For and on behalf of The Livery Stable

Signed ……
Dated ……

Owner

Schedule 1 The Horse

Name ……
Age ……
Height ……
Sex ……
Breed ……
Breed Reg. No ……
Freeze mark ……
Colour ……
Description ……
……

……
The horse …… known as '……' is as described above and is sound, free from any stable vices or other habits, good to box, shoe, clip, catch and in traffic, of good temperament to handle and ride save as set out below.:

……
……
……

The Owner confirms that he has hereby disclosed all known unsoundness, pre-existing health and/or dental conditions or problems, vices, defects, habits or specific characteristics of the horse to the best of his knowledge and belief and The Livery Stable is taken to accept the horse with those so disclosed as above but with no other.

The Livery Stable reserve the right to require The Owner to remove the horse immediately at any time at The Owner's expense should the horse prove not to be as described above and in particular if it has one or more vices likely to affect other horses on the yard detrimentally, is carrying any infectious disease or illness, or is, or becomes dangerous, in the opinion of The Livery Stable, to ride or handle.

Schedule 2 Tack and Equipment

The horse is liveried with tack and equipment as set out below:

……
……

The Livery Stable will be responsible for cleaning of all tack and equipment, but not for repair, replacement or upkeep. It is The Owner's responsibility to keep the tack and equipment in a safe condition.

Tack and equipment is and remains the property of The Owner. The Livery Stable will *not* insure any tack or equipment whilst it is in their possession under this agreement and if The Owner requires insurance cover for the tack and equipment then he/she *must* make their own arrangements, except that The Livery Stable will not be responsible for the provision or cost of any modifications to its premises and/or systems necessary to comply with the terms of any policy, such modifications and the cost of the same will be the responsibility of The Owner nor will The Livery Stable allow any modifications which in The Livery Stable's absolute discretion are deemed to be unreasonable and / or unreasonably required by The Owner even where this means the terms of any policy cannot then be complied with.

For the avoidance of doubt, The Owner should obtain details of any policy requirements before taking out any policy and obtain express prior permission to the terms of the policy from The Livery Stable where necessary.

Schedule 3 Optional extras

The Livery Stable will not be responsible for the following unless specifically requested when such services can be provided at the cost stated, such costs to be reviewed annually on the …….

1.	**Grooming**	Daily grooming included in cost of Full Livery.
2.	**Exercising**	£ …… per horse per session.
3.	**Lunging**	£ …… per horse per session
4.	**Tack cleaning**	£ ….. per saddle and bridle. £ ….. per piece after that.
5.	**Show preparation**	Bathing, mane and tail plaited. £….., 7 days notice usually required.
6.	**Clipping**	Between £….. and £….. per horse depending on clip. Horse must be good to clip. £….. extra charge if difficult horse.

Please tick if required on a regular basis and set out beside the service the agreed terms, e.g. ‘once a week’, ‘each time used’ etc.

SAMPLE GRAZING AGREEMENT

Plain text should be included, italics show where amendments are needed, sample clauses you may wish to include or additional explanation

The Owner and the Grazier should each retain a signed copy of the agreement.

GRAZING LICENCE

THIS LICENCE is made on the Date set out in the Particulars

BETWEEN:

(1) **The Licensor** named in the Particulars (the "**Licensor**")

(2) **The Licensee** named in the Particulars (the "**Licensee**")

PARTICULARS

Date	……..
Licensor	[*name and address*]
Licensee	[*name and address*]
The Premises	The land known as ……. at …….. extending to approximately ….. [*acres*][*hectares*] shown for identification purposes only edged in [*red*] on the attached plan.
Licence Fee	£ ……. payable on …….. [*by ……equal instalments of £ ……. on ……..*]
Licence Period	The period starting on ..…… and expiring on …….
Rights	The right to keep …….. on the Premises for grazing purposes only [*and the right to mow the premises [once] [twice] during the Licence Period and to take away the grass*].
Stocking	Maximum number of horses ……

IT IS AGREED as follows :

1 Definitions and Interpretation

In this Licence the words and phrases have the meanings set out in Schedule 3

2 The Rights

The Licensor grants the Licensee the Rights for the Licence Period in accordance with the terms of this Agreement.

3 Licence

The Licensor permits the Licensee to enter onto the Premises to the extent necessary to exercise the Rights and for no other purposes during the Licence Period on the terms set out in this Licence

For the avoidance of doubt full occupation and possession of the Premises remains with the Licensor subject only to the Rights and the Licence hereby granted to the Licensee

4 Licensee's Agreements

The Licensee agrees with the Licensor :

(a) To pay to the Licensor the Licence Fee.

(b) To exercise the Rights in such manner as not to do or cause or permit to be done any act or thing on or near the Premises which may be or become a nuisance or inconvenience or cause damage or annoyance to the Licensor or other persons or which may infringe any Legislation.

(c) To use the Premises for the exercise of the Rights and for no other purpose whatsoever.

(d) To indemnify and keep the Licensor indemnified from and against all actions, proceedings, costs, claims and demands by third parties in respect of any damage or liability caused by or arising from the exercise by the Licensee of the Rights.

(e) To comply fully with the legislation so far as the same shall relate to the exercise of the rights and the Licensee's use of the Premises and to keep the Licensor effectively indemnified against all actions, proceedings, costs, expenses, claims and demands in respect of any matter contravening the provisions of such Legislation.

(f) To comply with any other restrictions which the Licensor shall reasonably dictate during the Licence Period.

(g) To comply with the provisions affecting the Rights as set out in Schedule 2.

(h) On termination of this Agreement immediately to remove his stock from the Premises.

5 Termination

The rights and the Licence shall terminate immediately on the happening of any of the following events:

(a) If at any time the Licensee goes into liquidation.

(b) An administration order is made against the Licensee.

(c) A receiver or manager shall be appointed in respect of the Licensee's affairs or the whole or any part of his property or undertaking.

(d) The Licensee shall (if an individual) die or become incapable by reason of mental or physical illness of discharging his obligation hereunder or be the subject of a bankruptcy petition or bankruptcy order or (if a company or partnership or other body) shall cease to exist.

(e) The Licensee shall enter into any arrangement or composition with his creditors (including for the avoidance of doubt any voluntary arrangement within the meaning of Part I or Part VIII of the Insolvency Act 1986).

(f) The interest of the Licensee under this Licence shall be taken in execution.

(g) The Licensee shall commit any grave breach or persistent breaches of this Licence and the Licensor having given written notice to the Licensee of such breach or breaches the Licensee shall fail within such period as the Licensor may specify to rectify such breach or breaches (if capable of rectification).

6 Personal Licence

The Rights and this Licence are personal to the Licensee and shall not be capable of being assigned or otherwise dealt with.

7 Fitness of the Premises

By entering into this Licence the Licensor does not undertake that the Premises are or will become or remain fit for the purposes set out in the Particulars.

AS WITNESS the hands of the parties the day and year first before written

Schedule 1

The Premises

OS / NG Number ……..

Description ……..

Acres / Hectares ……..

Schedule 2

Provisions affecting the Rights

The Licensee shall :

(a) Not bring on to the Premises any diseased animal.

(b) Not bring on to the Premises more than the maximum number head of livestock as stipulated in the particulars at any one time.

(c) To keep buildings and fixed equipment on the Premises in their current state of repair and condition [as evidenced by the attached (photographic) schedule of contents.

(d) To keep all fences, hedges and gates in proper stockproof condition and to indemnify the Licensor against all costs, claims or demands made by and persons for damages or other monies arising from the escape from the Premises of all or any of the horses or ponies placed upon the Premises by the Licensee.

(e) To keep all ditches and drains free from obstruction.

(f) Not allow the Premises to become poached by treading during wet weather conditions and if the Licensor shall certify that any damage is being caused then upon demand immediately remove the stock.

(g) Not bring cause or permit to be done or brought any object matter or thing upon the Premises by which any policy of insurance of the Licensor would or might be prejudicially affected.

(h) Not permit the spread of injurious weeds under the provisions of the Weeds Act 1959 and the Ragwort Control Act 2003.

(i) Not to use or farm the Premises or any part of it for the purposes of a trade or business.

(j) Not to sell off or remove from the Premises any hay or straw and not to mow the permanent pasture.

(f) On termination of this Agreement forthwith remove his stock from the Premises.

Schedule 3

Definitions and Interpretations

"**Legislation**" means all European or UK Statutes or Statutory Instruments and any Orders, Regulations, Directives and Codes of Practice for the time being in force issued by any competent authority in respect of the Premises and the use of it.

"**Licence Fee**" means the licence fee set out in the Particulars payable as set out in the Particulars.

"**Licence Period**" means the licence period set out in the Particulars.

"**Particulars**" means the particulars page set out at the beginning of this Agreement.

"**Premises**" means the land (including all buildings and fixed equipment thereon) set out in the Particulars and more fully described in Schedule 1.

"**Rights**" means the rights granted as set out in the Particulars subject to the provisions of Schedule 2.

In this Licence unless the context otherwise requires :

(a) where any obligation is undertaken by two or more persons jointly they shall be jointly and severally liable in respect of that obligation

(b) any sum payable by one party to the other shall be exclusive of Value Added Tax which shall where it is chargeable be paid in addition to the sum in question at the time when the sum in question is due to be paid.

(c) Any reference to a Statute includes the reference to that Statute as amended or replaced from time to time and to any subordinate legislation or bye-law made under that Statute.

SIGNED by the Licensor)
in the presence of:)

SIGNED by the Licensee)
in the presence of:)

PARTNERSHIP AGREEMENTS

Partnership agreements can cover any relevant issues. In the absence of any such agreement the Partnership Act 1890 or any terms implied by the partnership contract will be invoked.

'Universal' articles might be :

- **Names of the parties to the agreement** - although a person might *in fact* be a partner even though his / her name is not on the agreement.

- **Nature of the business** - particularly important due to principles of agency and fiduciary duties.

- **Name and address of the firm** - note the application of Business Names Act 1985 if partners trade in any names other than the names of the partners. Note, also, the tort (civil wrong) of passing off.

- **Dates of commencement and dissolution** - although written dates in the agreement will not be conclusive evidence in the face of contradictory facts.

- **Capital of the firm and individual partners** - in the absence of such a provision the Partnership Act (s24) states that capital will be divided equally on the dissolution (ending) of the partnership.

- **Salary and profit entitlement of the partners** - in the absence of such a provision the Partnership Act (s24) states that profits will be shared equally.

- **Management of the business partners** - in the absence of such a provision the Partnership Act (s24) states that all partners will take part in the management of the business.

- **Banking arrangements**, e.g. the name of the chosen bankers and the right to draw cheques - the partnership may not wish *all* partners to have the right to sign cheques on the partnership account.

- **Accounting dates**.

- **Admission and expulsion of partners** - in the absence of such a provision the Partnership Act (s24) states that all partners need to consent to the admission of a new partner.

- **Death or retirement** - in the absence of such a provision the Partnership Act (s33) states that the death of a partner automatically dissolves the firm. It is usual for commercial firms to provide for the 'perpetual succession' of the business on death, i.e. the partnership continues in existence with the remaining partners.

- **Goodwill** - provisions should be made for the valuation of goodwill and entitlement on death or retirement.

- **Arbitration** - such a clause avoids disputes between the partners ending in litigation (court action) when arbitration would provide a cheaper, faster and less damaging form of dispute resolution, both to the partnership business and the individuals involved.

- **Restraint of trade clause** - provision forbidding partners to engage in any other business without the consent of the other partners, either whilst the partner with with the firm and / or after leaving the partnership.

- **Administrative arrangements**, e.g. holiday entitlement.

- **Sphere of activity** - what does each partner actually do - role / job title.

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Consumer Protection Act 1987
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Countryside and Rights of Way Act 2000
Criminal Justice and Public Order Act 1994
Dangerous Dogs Act 1991
Data Protection Act 1998
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Equality Act 2010
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Local Government Act 2003
Local Government Finance Act 1988
Mental Health Act 1983
Mines and Quarries Act 1954
Minors' Contracts Act 1987
Misrepresentation Act 1967
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Police and Criminal Evidence Act 1984
Protection from Harassment Act 1997
Protection of Children Act 1999

Protection of Wild Mammals (Scotland) Act 2002
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Rating (Former Agricultural Premises and Rural Shops) Act 2001
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Water Resources Act 1991
Weeds Act 1959
Wildlife and Countryside Act 1981

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Access to the Countryside (Dedication of Land) (England) Regulations 2003
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Further Reading

In addition to the primary sources of law reports and legislation, reference has also been made to the following works in the preparation of these notes, and acknowledgement is given accordingly. They will provide a useful resource for readers who wish to explore issues in more detail.

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Glossary

ADR	Alternative Dispute Resolution - the resolution of disputes by methods other than court hearings, such as arbitration, mediation or conciliation.
Agency	Where one party is appointed to act for another and can thus bind that other in contract, as opposed to being personally liable.
Agistment	Taking animals onto land for reward, i.e. grazing.
Agriculture	There is no one definition for legal and taxation purposes but the word broadly encompasses horticulture, fruit growing, seed growing, dairy, keeping livestock for the production of food or other produce (e.g. wool). In the context of equine activities, the term is largely reserved for stud farming.
Arbitration	The determination of disputes by the use of a third party, agreed by the parties involved. The arbitrator's decision will normally be binding.
Caveat emptor	Let the buyer beware.
Child	Age varies as to context and in many areas it will be a subjective matter dependent upon circumstances and the understanding of the individual. For criminal matters, under 10 years old (Criminal Justice Act 1998).
Common law	Historically and legally there are wider meanings but, in general terms, the phrase is used to mean case law as opposed to legislation.
Conciliation	The bringing together of two parties to settle disputes, e.g. by using ACAS in the employment context.
Condition	A major term in a contract, breach of which gives the wronged party the right to rescind the contract.
Consumer	A party dealing *not* in the course of business where the other party *is* dealing in the course of business.
Contract	A legally binding agreement between two (or more) parties for the exchange of goods or services for reward. To be distinguished from a bare gift.
Docking	Removal of all or part of horses tail.
Legislation	Alternative name for statute law - Acts of Parliament.
Licence	The authority to do something which would otherwise be unlawful, e.g. to enter on land.
Mediation	A form of non-adversarial dispute resolution whereby the parties employ a neutral third party as a mediator to promote communication. The mediator has no power to decide the outcome (unlike an arbitrator).

Minor A person under the age of 18 years.

Negligence A breach of duty of care by the defendant, which results in damage, unwanted and unintended by the defendant, to the claimant.

Nicking To cut into the tendons of a horse's tail to make it stick up.

Occupier For the purposes of civil liability, the occupier may be the owner or the person with control over property, whether for an extended period of time, e.g. a tenant, or for a few hours, e.g. someone hiring premises. There can be more than one occupier for these purposes.

Passing Off Name a business in the attempt to convince the public that it is an established firm.

Possession For the purposes of civil liability, someone who has control over, say, a horse, which might be the owner or temporary keeper.

Profit à prendre The right, which may attach to the ownership of land, to take something from the land of another, e.g. to graze, fish or take wood. A form of licence.

Rig Incompletely gelded stallion.

Sound In an equine context, that the horse is free from any disease or defect which actually diminishes, or in its ordinary progress will diminish, its normal usefulness (*Coates v Stephens* (1838)).

Statute Alternative name for legislation - Acts of Parliament.

Tribunal Body with judicial functions set up by the state to determine claims in specific areas, e.g. Employment Tribunal, Agricultural Land Tribunal.

Tort A civil wrong, other than contract, which includes negligence, nuisance, trespass and defamation.

Uberrimae fidei Contracts of utmost good faith where there is an onus of complete, unprompted disclosure, e.g. insurance.

Vice In an equine context, a vice is a defect in the temper of the horse which makes it dangerous or diminishes its usefulness, or a bad habit which is injurious to its health (*Scholefield v Robb* (1839)).

Warranty

1. A minor term in a contract, breach of which give rights to damages but not to rescind the contract.
2. A statement by a vendor as to the condition of the subject matter of the sale.

Useful Contacts

ACAS (Advisory, Conciliation and Arbitration Service)
www.acas.org
☎ 08457 47 47 47

ADAS (consultants to rural and land based industries)
www.adas.co.uk
☎ 0845 766 0085

Association of British Riding Schools (ABRS)
www.abrs.org.uk
☎ 01736 369440

British Association of Equine Dental Technicians
☎ 01827 284718
www.equinedentistry.org.uk

British Dressage
www.britishdressage.co.uk
☎ 02476 698830

British Endurance Riding Association
www.british-endurance.org.uk
☎ 02476 698863

British Equestrian Federation
www.bef.co.uk
☎ 02476 698871

British Equestrian Insurance Brokers Ltd (independent advisor)
☎ 01732 771719
www.beib.net

British Equestrian Trade Association
www.beta-uk.org
☎ 01937 587062

British Equine Dealers Federation
☎ 01652 688819

British Equine Veterinary Association
www.beva.co.uk
☎ 020 7610 6080

British Eventing
www.britisheventing.co.uk
☎ 02476 698856

British Horse Driving Trials Association
www.horsedrivingtrials.co.uk
☎ 01347 878789

British Horse Society (BHS)
www.bhs.org.uk
☎ 01926 707700

British Show Jumping Association (BSJA)
www.bsja.co.uk
☎ 02476 698880

Central Association of Agricultural Valuers (CAAV)
www.caav.org.uk
'Professional advice and valuation expertise on issues affecting the countryside from tenancy matters to sales and purchase of farms & land, from taxation and compulsory purchase to auctioneering, from conservation issues to farming structures.'
☎ 01594 832979

Chartered Institute of Arbitrators
www.arbitration.org
☎ 020 7421 7444

Companies House
www.companieshouse.gov.uk
☎ 0870 33 33 636

Country Land and Business Association
www.cla.org.uk
☎ 020 7235 0511

Countryside Agency
www.countryside.gov.uk.
☎ 01242 521381

Countryside Agency countryside access site
www.countrysideaccess.gov.uk
☎ 01242 521381

Court Service (advice about small claims procedure)
www.courtservice.gov.uk/you_courts/civil/claimant
☎ 020 7189 2000

Department. for the Environment, Food and Rural Affairs
www.defra.gov.uk
☎ 08459 33 55 77

DEFRA Rural Development Service
Bristol RDS
Avon, Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Cornwall, Devon, Dorset, East Sussex, Essex, Gloucestershire, Hampshire, Herefordshire, Worcestershire, Hertfordshire, Isle of Wight, Isles of Scilly, Kent, London Boroughs, Norfolk, Oxfordshire, Shropshire, Somerset, Staffordshire, Suffolk, Surrey, Warwickshire, West Midlands, West Sussex, Wiltshire
☎ 0117 959 8622

Crewe RDS
Cheshire, Cleveland, Cumbria, Derbyshire, Co. Durham, Greater Manchester, Humberside, Lancashire, Leicestershire, Lincolnshire, Merseyside, Northamptonshire, Northumberland, Nottinghamshire, Rutland, Tyne and Wear, Yorkshire
☎ 01270 754262

Driver and Vehicle Licensing Agency (DVLA)
www.dvla.gov.uk
☎ 0870 240 0009 (driver enquiries)

EduCare (child protection education in conjunction with NSPCC)
www.debrus-educare.co.uk
☎ 01926 436209

Employment Tribunal
www.employmenttribunals.gov.uk
☎ local office details on website

Environment Agency
www.environment-agency.gov.uk
☎ 08708 506 506

Equine Lawyers Association
www.members.aol.com/ukbiz/peachey
☎ 01652 688819

Equine Mapping and Geographical Information Network
emagin@bhs.org.uk
☎ 02476 840585

Farriers Registration Council
www.farrier-reg.gov.uk
☎ 01733 319911

Health and Safety Executive (HSE)
www.hse.gov.uk

HM Revenue and Customs
(new combined body, formerly Inland Revenue *and* HM Customs and Excise)
www.hmrc.gov.uk

Horse and Hound online
www.horseandhound.co.uk

Ifor Williams Trailers
www.iwt.co.uk
☎ 01490 412626

Information Commissioner (Data Protection Act administration)
www.informationcommissioner.gov.uk
☎ 01625 545 745.

The Jockey Club
www.jockeyclub.co.uk
☎ 020 7468 4921

LANTRA - national training organisation of land based industries
www.lantra.co.uk
☎ 02476 696996

The Law Society (solicitors' governing body with database of specialist lawyers)
www.lawsociety.co.uk
☎ 020 7242 1222

Mark Davies Injured Riders Fund (charity for those injured in equine accidents)
www.mdirf.co.uk
☎ 01258 817859

Master of Draghounds & Bloodhounds Association
www.draghunting.org.uk
☎ 01273 495188

Master of Foxhounds Association
www.mfha.co.uk
☎ 01285 831470

The National Association of Farriers, Blacksmiths and Agricultural Engineers
www.nafbae.org
☎ 024 7669 6595

National Equine Welfare Council
www.newc.co.uk
☎ 01295 810060

National Federation of Bridleway Associations
www.rightsofway.org.uk.

National Trailer and Towing Association
www.ntta.co.uk
☎ 01926 335445

National Trainers Federation
www.martex.co.uk/racehorse-trainers
☎ 01488 71719

NFU Countryside
www.nfucountryside.org.uk
☎ 0870 840 2030

Ofsted (regulation of work with children under 8 years old)
www.ofsted.gov.uk
☎ 020 7421,6800

Organisation of Horsebox and Trailer Owners (specialist recovery schemes)
www.horsebox-rescue.co.uk
☎ 01488 657651

The Pony Club
www.pony-club.org.uk
☎ 02476 698300

Royal College of Veterinary Surgeons (RCVS)
www.rcvs.org
☎ 020 7222 2001

Royal Institution of Chartered Surveyors (RICS)
www.rics.org
☎ 0870 333 1600

Royal Society for the Protection of Cruelty to Animals (RSPCA)
www.rspca.org.uk
☎ 0870 753 0048

Rural Payments Agency
www.rpa.gov.uk
☎ 0845 601 8045

Society of Master Saddlers
www.mastersaddlers.co.uk
☎ 01449 711642

Trading Standards
www.tradingstandards.gov.uk

Valuation Office Agency (business rates)
www.voa.gov.uk

Weatherbys Bloodstock Reports
www.weatherbys.net/eol/
☎ 01933 304754

World Horse Welfare
www.worldhorsewelfare.org
☎ 01953 498682

Worshipful Company of Farriers
www.scf.org.uk
☎ 01923 260747

Worshipful Company of Saddlers
www.saddlersco.co.uk
☎ 020 7726 8661

EQUINE LAW

An introduction to aspects of law and taxation relating to horse, rider and the small equine business

Carrie de Silva

EQUINE LAW is a collection of notes primarily to accompany Equine Law seminars held at Harper Adams University and elsewhere. For information on forthcoming seminars or to book an Equine Law talk at another location contact Carrie de Silva.

Areas covered by these notes include :

- Buying and selling
- Grazing
- Animal welfare
- Riding on the road
- Rights of way
- Negligence
- Taxation
- Business structure
- Environmental liabilities - muck heaps
- Health and safety
- Hunting
- CAP reform and equine grazing
- Livery contracts
- Riding school licensing
- Sample loan agreement
- Sample livery agreement
- Sample grazing agreement
- Useful contacts

These notes provide an introductory coverage of general interest - for reasons of complexity requiring specialist advice, matters relating to racing and betting are largely excluded.

Due to the nature of the subject matter, the notes will be updated periodically, thus, comments, queries, corrections and suggestions for improvements to future editions are most welcome. Please send any such comments to the author at the address below or by email to cdesilva@harper-adams.ac.uk .

These notes are included in the cost of Equine Law Seminars. Copies can be purchased separately for £20, or £15 to *bona fide* students. Orders, accompanied by a cheque made payable to Harper Adams University, to be sent to Mrs Fiona Davies, Land, Farm and Business Management Dept. at the address below.

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