

WEBINAR PRESENTATION: Tuesday 20 July 2021

# From *Exodus* to the Animals Act 1971: horses, cattle and dogs

Matthew Chapman QC & Thomas Yarrow  
Barristers, 1 Chancery Lane

## Introduction: scriptural foundations

*If an ox gore a man or a woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit. ... But if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death.*

*(Exodus c. 21: v 28 - 29: “Divers laws and ordinances”)*



## Animals Act 1971

### *2 Liability for damage done by dangerous animals*

...

*(2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if-*

- (a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and*
- (b) the likelihood of the damage or of its being severe was due to the characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and*
- (c) those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of sixteen.*

## Animals Act 1971, s2(2): basic scheme

*Freeman v Higher Park Farm* [2009] PIQR P103 (CA) per Etherton LJ:

*“the statutory process requires (1) identification of the kind of damage actually caused by the actual animal involved; (2) consideration of whether that kind of damage was likely to be caused by that particular animal unless restrained, or, if caused, was likely to be severe; and, (3) consideration of whether the likelihood of such damage or its severity was due to the deviation of the animal from the normal characteristics of others in the same species or to characteristics which it shared with others of the same species but are normally found in the species only at particular times or in particular circumstances.”*

JUDICIAL CRITICISMS OF SUBSECTION 2(2): “opaque”, “oracular”  
... “grotesque”!



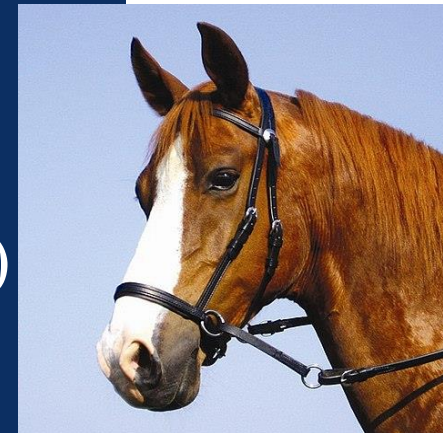
s. 2(2)(a): “likely”

- *Mirvahedy v Henley* [2003] 1 AC 491 (SC);
- *Welsh v Stokes* [2008] 1 WLR 1224 (CA);
- *Freeman v Higher Park Farm* [2009] PIQR P103 (CA);
- *Lynch v Ed Walker Racing* [2017] EWHC 2484 (QB).



s.2(2)(b): characteristics and propensity

- “normally” (*Goldsmith v Patchcott* [2012] PIQR P11 (CA));
- *Bodey v Hall* [2011] PIQR P1 (QB);
- *Turnbull v Warrener* [2012] PIQR P16 (CA);
- Connection/linkage between ss 2(2)(a) and (b) (*Williams v Hawkes* [2018] RTR 16 (CA)).



s. 2(2)(c): knowledge etc.



## Statutory defences: s. 5

- *Jones v Baldwin* [2010] 10 WLUK 221;
- *Bodey v Hall* [2012] PIQR P1 (QB);
- *Goldsmith v Patchcott* [2012] PIQR P11 (CA) - foresight of the possibility of *some* bucking will suffice for the purposes of a voluntary assumption of risk (the statutory defence) and it was not necessary for the Claimant to foresee the precise degree of energetic misbehaviour which resulted in injury;
- *Turnbull v Warrener* [2012] PIQR P16 (CA).





## Dogs - Animals Act s.2(2)(a)

- Bite cases tend to focus on the second part of the paragraph - ‘likely to be severe’.
- Low thresholds:
- ‘likely’ : *Smith v Ainger* (the Times, 5 June 1990, CA.) - ‘might’ or ‘might well’.
- ‘severe’ - *Goldsmith* - ‘most animal-related damage which someone wishes to sue about’
- Example cases: *Cummings v Granger* [1976] 3 W.L.R. 842 - Alsatian roaming a yard; *Curtis v Betts* [1990] 1 W.L.R. 459 - Bull Mastiff being moved to rear of Land Rover
- Smaller breeds?
- Buffets or knock-downs - *Smith* - “it seems that damage caused by a large dog such as an Alsatian is likely to be “severe” within the meaning of section 2(2).”



## Dogs - s.2(2)(b)

- Lord Nicholls in *Mirvahedy* - considering the second part of paragraph s.2(2)(b) - dog guarding its territory or a bitch protecting her pup, could be normal in/at particular times/circumstances.
- Endorsed the *Cummings* and *Curtis* approach to interpreting the two parts. *Cummings* - running around barking; *Curtis* - again protecting perceived territory.
- Expectation in dog bite cases that one or other part of paragraph 2(2)(b) will be satisfied. Biting is generally abnormal in dogs but normal in certain contexts.
- Expert evidence required.
- Claimants also have an element of causation to prove: likelihood of damage must be 'due to' characteristic. See *Curtis* where claimant almost came a-cropper. Biting on its own does not prove a characteristic.



## Dogs - s.2(2)(c)

- Knowledge does not need to be of *biting per se*. Can be of aggressive behaviours (see *Curtis*) - growling, barking etc.
- 'Never done it before' therefore not always an impeccable Defence.
- Knowledge can also be inferred from knowledge of normal behaviours of the breed - see *Welsh v Stokes* [2007] EWCA Civ 796
- But can be hard for claimants to get evidence of defendants' knowledge. Very difficult to prove in face of a denial of liability - vet records?



## Dogs - OLA and negligence

- Advantage of OLA/negligence - don't need to impute D with subjective knowledge. Objective standard, reasonably prudent animal keeper. *Smith v Prendergast* (The Times, 18 October 1984, CA.)
- Disadvantage - foreseeability problem - sufficient probability of an injury such that a reasonable person in the position of the defendant should have anticipated it *Whippey v Jones* [2009] EWCA Civ 452.



Matthew Chapman QC

Thomas Yarrow

1 Chancery Lane

[mchapman@1chancerylane.com](mailto:mchapman@1chancerylane.com)

[tyarrow@1chancerylane.com](mailto:tyarrow@1chancerylane.com)

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