

Understanding and Avoiding Liability in the Horse Industry

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UNDERSTANDING LIABILITY

It has been said: “ All it takes is one lawsuit to force even the most successful horse facility to close its doors for good.” *As a general rule, however, legal liability does not necessarily exist simply because someone was hurt on your property or from your house.*

Liability is nothing to fear. Rather, it is something to understand and actively avoid. This brochure generally and briefly discusses liabilities where personal injuries result from equine related activities. This brochure is *not* a substitute for legal advice, however. Please direct specific questions regarding liability or other regarding liability or other legal issues to a knowledgeable attorney.

NEGLIGENCE

Negligence, as a concept, is hard to define. One who claims that another was negligent (the “plaintiff”) must prove that the allegedly-responsible party (the “defendant”) failed to act as an “ordinary” or “reasonable” person would have under similar circumstances and that the failure caused injuries or damages to occur. A defendant can be found negligent either by taking inappropriate action or by failing to take appropriate action or by failing to take appropriate action, depending on the circumstances and the foresee ability of harm. Here are examples of some equine-related negligence claims:

- *“Vicious or Dangerous” Properties.* Liability has been found when a defendant actually knew, or had reason to know, that a horse had particular dangerous propensities to injure others (through behavior such as biting, kicking, bolting, rearing, or bucking) but failed to warn or take appropriate precautionary action.
- *Improper Supervision.* Some lawsuits claim that the defendant, typically a trainer or instructor, gave improper supervision, which caused someone to be injured.
- *Equipment Defects.* Lawsuits are sometimes brought when someone is hurt as a result of defective or poorly adjusted saddles, bridles, martingales, or harnesses.
- *Unsuitability.* Some lawsuits have asserted that the defendant improperly matched a horse and rider, based on the riders actual or stated experience level.

The law recognizes differences between negligence and gross negligence. For example, if an employee of riding stable forgets to adjust a horse’s cinch or girth before sending him out on the first ride of the day, the stable will probably be found negligent if the saddle later slips and the rider are injured. By comparison, a stable that saddles its horses with seriously defective cinches or girths, knowing that the equipment could break at any time while a customer is riding, might be found to have committed acts of gross negligence (or in some states, willful and wanton misconduct) when the equipment breaks and injures a rider.

Damages

In a lawsuit, the sum of money the plaintiff seeks is called “damages.” If the plaintiff can successfully prove that the defendant caused harm and should be legally responsible for it, then the judge or jury will be asked to evaluate the appropriate amount of damages, if any that the plaintiff should receive.

Damages in personal injury lawsuits can include, *but are not limited to*, compensation for: the injury suffered; damage or destroyed property; medical bills; harm to marital and familial relations (called “loss of confusion”); lost past and future earnings; and physical and emotional “pain and suffering.” In some states, where a defendant is found to have acted intentionally or maliciously, a court might order that party to pay “punitive damages,” as well. Others design punitive damages to punish the defendant and to discourage similar wrongful conduct. One publicized punitive damage award involved the McDonald’s coffee sales profits.

Defenses

Depending on the applicable facts and law, one who is sued can assert several possible defenses. In equine matters, defenses may include, *but are not limited to*: plaintiff theory negligence,” but other states evaluate it differently and term it “contributory negligence”); the defendant did not cause that damages and it is not legally responsible; the plaintiff’s lawsuit failed to assert a legitimate legal duty owned by the defendant; the danger was “open and obvious” to the plaintiff; assumption of risk (the plaintiff understood the risks involved but chose to proceed anyway); the injury was solely caused by an “inherent risk of an equine activity” and not actionable under equine liability law, and/or there is a legally enforceable waiver or release of liability.

THE EQUINE ACTIVITY LIABILITY LAWS

As of October 1999, these 44 states have passed laws that are designed to, in some way, control of certain liabilities when people are injured in equine activities: Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Many of the laws have common characteristics, but all of them differ. To receive a copy of the law in your state or where you do business, contact your state horse council, legislator, cooperative extension service, or lawyer.

Generally, the equine activity liability laws prevent certain equine activity participants and others from bringing suit and recovery damages if an injury results from an "inherent risk of an equine activity" (subject to exceptions). These and other terms are usually defined in the laws.

Exceptions in the Laws That May Create Liability

Most of the equine activity liability laws contain exceptions, which may allow lawsuits grounds to proceed. For example, most of the laws state that an "equine activity sponsor," "equine professional," or possibly others can be sued if they:

- Provide faulty tack or equipment that causes injury, death, or damage;
- Fail to determine the rider or the handler's ability to safely manage an equine;
- Have land or facilities on which equine activities take place that have a dangerous on-obvious condition but for which no noticeable warning signs were posted;
- Some laws have exceptions that may allow liability for "gross negligence" or international wrongdoing. A small number of laws allow liability for "negligence."

As these exceptions indicate, the equine activity liability laws are *not* "zero liability laws" and were never intended to permanently end all liability in the horse industry. Consequently, the potential for liability remains, and the need for keeping good insurance is still strong.

Sign and notice Requirements Under Certain of the Equine Liability Laws

Liability laws in these states require certain persons or entities (usually equine activity sponsors or equine professionals) to post special warning signs containing specific, mandated language: Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Tennessee, Vermont, and Wisconsin.

Many of the equine liability laws also require individuals, business, and professionals to repeat the mandated language, or other language, in various contracts (such as for boarding, breeding, lessons, equipment rental), and liability waivers/releases.

AVOIDING LIABILITY

Understanding what can cause liability is an important first step in the effort to avoid it. Horse owners and professionals can take active measures to *prevent*, as much as possible, conditions that may cause injuries and, potentially, liability. Avoiding also requires separating fact from fiction. One myth in the horse industry, for example, is that releases or waivers are useless; actually, when properly written and signed they can be enforceable in most states. The book *Equine Law & Horse Sense* can help you liability.

About the Author

A practicing attorney for 13 years, Julie I. Freshman serves stables, insurance companies, professionals, businesses, associations, show managers, and horse owners nationwide. Her expertise also includes employment law and business litigation. She is "AV" rated [highest rating] by the *Martindale Hubbell Law Directory*, is listed in *Who's Who in American Law*, and was named by the *ABA Barrister Magazine* as one of the "21 Young Lawyers Leading Us Into the 21st Century."

Ms. Freshman has achieved several noteworthy successes in equine industry cases and has drafted hundreds of equine-related contracts. She is a frequent speaker at conventions including American Horse Council, Equine Affaire, and the National Conference on Equine Law. She is the "Ask the Expert" consultant for *EQUUS*, *Horse & Rider*, and *Practical Horseman* is her first book, and her second book will be released soon.

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