


ANIMALS ACT CLAIMS

Helen Pooley
PIBA Conference 2019




1



Who is liable under the Act?

- The Keeper (s.6(3) “owns the animal or has it in his possession”)
- Extent of control necessary – *Hole v Ross-Skinner* [2003] EWCA Civ 774
- Multiple Keepers – *Flack v Hudson and Custance* (2000) CA

2



Dangerous v Non-dangerous

- Section 6(2) – defines: ‘dangerous’

A dangerous species is a species-

(a) which is not commonly domesticated in the British Islands: and

(b) whose fully grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage they do is likely to be severe.

3

9 GOUGH SQUARE

- All the rest – non dangerous
- “Species” includes sub species so dogs prohibited by the Dangerous Dogs Act are now likely to fall within section 6(2) even though other dogs will not

4

9 GOUGH SQUARE

- Section 2(1) – strict liability for damage done by dangerous animals
- Section 2(2) – ‘strict’ liability for damage done by non dangerous animals

5

9 GOUGH SQUARE

The section 2(2) test

- (a) likelihood test
- (b) characteristic test
- (c) knowledge test

6

9 GOUGH SQUARE

Section 2(2)(a): likelihood

- Two limbs
- Likely: "Such as might happen"
- First limb – foreseeability?

7

9 GOUGH SQUARE

- Second Limb
- *Freeman v Higher Park Farm* [2008] EWCA Civ 1185
- *Turnbull v Warrener* [2012] EWCA 412

8

9 GOUGH SQUARE

Section 2(2)(b): characteristic

- Two limbs – first limb fairly straightforward
- Unusual Characteristics
- Second Limb - Historical conflict of authorities
- *Cummings v Grainger* [1997] QB 397
- *Breedon v Lampard* CA 1985 Unreported

9

9 GOUGH SQUARE

- *Mirvahedy v Henley* [2003] UKHL 16
- *Williams v Hawkes* [2017] EWCA Civ 1846
- Liability without fault where animal acting normally
- Must Identify a Characteristic – *Livingstone v Armstrong* 2003
- Expert evidence?

10

9 GOUGH SQUARE

Particular time or particular circumstance

- Does a Claimant have to prove the particular time or circumstance?
- *Tapp v Blue Cross* LTL 21/10/13

11

9 GOUGH SQUARE

Link between 2(2)(a) & 2(2)(b)

- The Link between 2(2)(a) and (b)
- Cannot change horses
- *Bowlit v Clark* [2006] EWCA Civ 978
- “Section 2(2) is not intended to render the keepers of domesticated animals routinely liable for damage which result from characteristics common to the species” Per Sedley LJ
- *Lynch v Ed Walker Racing* [2017] EWHC 2484 (QB)

12

9 GOUGH SQUARE

Section 2(2)(c): knowledge

- *Welsh v Stokes* [2007] Civ 796
- *McKenny v Foster* [2008] EWCA Civ 173

13

9 GOUGH SQUARE

Statutory Defences

- Section 5(1)
- "A person is not liable under sections 2 to 4 of this Act for any damage which is due wholly to the fault of the person suffering from it"

14

9 GOUGH SQUARE

Statutory Defences (2)

- Section 5(2)
- Voluntary acceptance of risk – some examples?
- Does not apply to employees – Section 6(2)
- *Bodey v Hall* [2011] EWHC 2162, *Goldsmith v Patchott* [2012] EWCA Civ 183 and *Turnbull v Warrener* [2012] EWCA Civ 412

15

9 GOUGH SQUARE

Statutory Defences (3)

- Defences – section 5(3)
- Trespasser
- Guard dog exception

16

9 GOUGH SQUARE

Time for lunch!

17
