UNDERSTANDING EQUINE ACTIVITY LIABILITY AND MINIMIZING YOUR RISK . . .
KEEP DOING WHAT YOU ARE DOING, JUST DO IT BETTER

Written by Yvonne C. Ocrant, Esq., Hinshaw & Culbertson LLP - Equine Attorney

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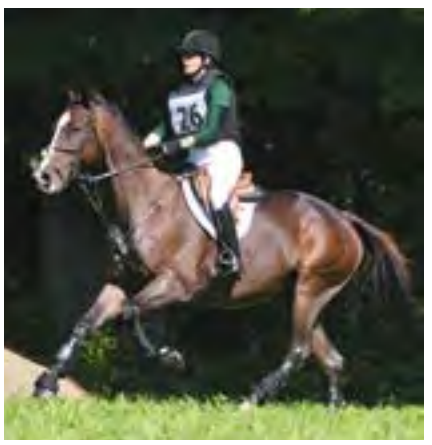
A commercial operator has a duty to ensure the facilities and services do not increase the risk of injury above the level inherent in such activity. This does not create a duty to provide "ideal" riding horses such that they never buck, bolt, stumble, or spook. The Courts recognize that such sudden movements of a horse are inherent in riding even in the supervised controlled settings.

As an equine attorney, I often hear: "I can't be sued for that" or "He assumed the risk so I'm not liable" or my favorite "He is my friend, he won't sue me." Unfortunately, we now live in a litigious society. No one is completely immune from lawsuits, especially in the horse industry. Despite taking all feasible safety measures, there are always "built-in" dangers while working with or around horses. Horseback riding is a dangerous sporting activity – being thrown off a horse is an inherent risk of horseback riding; some would say it is one of the most obvious risks of that activity, and readily apparent to anyone about to climb on a horse. However, the question of liability in California does not begin and end with the assumption of risk principle.



Yvonne trains and competes with her 8-year old OTTB "Kenny" affectionately known as "Cannonball Kenny" for his love of speed over fences and running cross-country.

Law makers recognize that equine activities are inherently dangerous, but still want to encourage participation. At this time, 48 states have an equine liability law to encourage horse related activities. These laws explicitly state that participants engage in equine activities at their own risk. California and Maryland do not currently have an equine activity liability law. Therefore, the legal analysis is somewhat different when determining the assumption of risk and liability protections for equine activities in these two states.

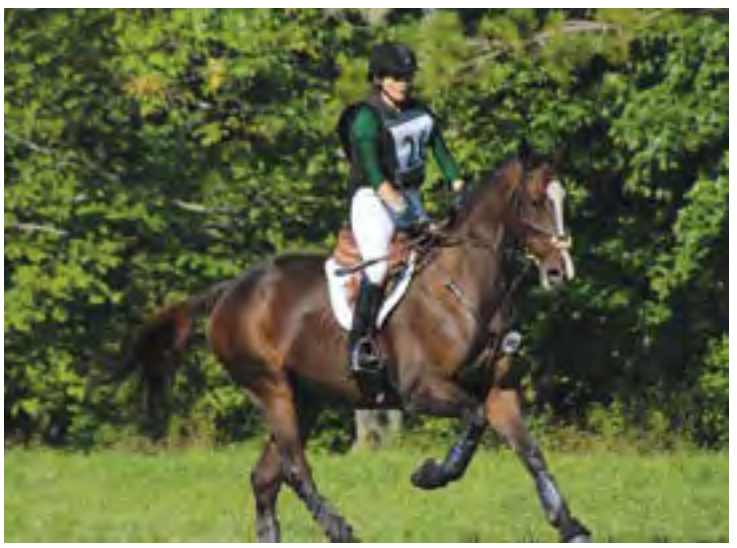
This article summarizes the law applied to equine activity injury claims in the State of California. There is no guarantee how a Court will decide any case and this article does not provide legal advice for any particular set of facts or circumstances. However, knowing how the California legal system applies the facts to the law creates a list of best practices to reduce the likelihood of "bad facts" when liability considerations are made.

Duty of Care and Assumption of Risk

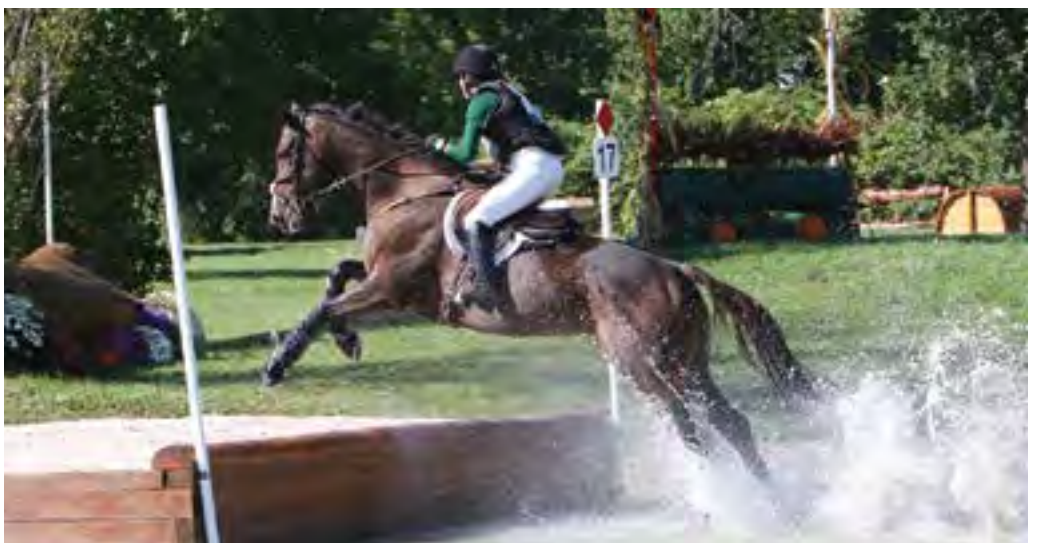
The challenges of a sport that pose a risk of injury, like equine activities, often are an integral part of the sport itself. Therefore, those who participate in such activities generally assume the risk that they may be injured while doing so. Providers of equine activities generally have no legal duty to eliminate, or protect a participant against, the risks inherent in the sport. They generally only have a duty not to increase the risks over and above those inherent in the equine activity itself. To require otherwise, would effectively require abandoning an integral part of the sport or would discourage vigorous participation in equine activities all together.

Increased Risk of Harm

The issue of whether a particular act or omission constitutes an increase in the inherent risk is one of the most litigated issues in California courts in horse-related injury cases. A material factor is whether the provider is a commercial operator for activities such as trail riding, lessons, and horse



Yvonne always runs cross-county in a body protecting vest that inflates upon separation from the horse in the event of a fall.

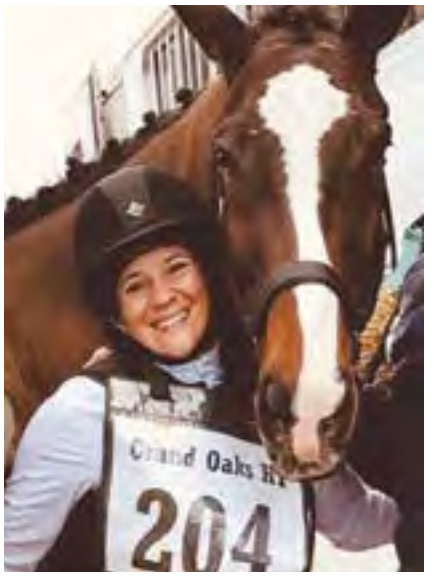


The equestrian sport of Eventing includes cross-country jumping which is the most dangerous and challenging phase, and yet the most rewarding for riders and entertaining for spectators.

boarding, or a merely a social host letting a friend or guest take a ride.

A commercial operator has a duty to ensure the facilities and services do not increase the risk of injury above the level inherent in such activity. This does not create a duty to provide "ideal" riding horses such that they never buck, bolt, stumble, or spook. The Courts recognize that such sudden movements of a horse are inherent in riding even in the supervised controlled settings. In other words, there is no duty to protect riders from the risk of injury inherent in a horse behaving as a horse. However, an operator does have a duty to supply horses which are not unduly dangerous and to warn a rider if a horse has a history of behaving in ways which add to the ordinary risk of riding.

For example, a woman on a commercial trail ride in California was thrown off the horse she was riding when the horse spooked by the mounted rider removing her jacket. The horse had once before spooked when its rider took off his hat and waived it in the air. The Court found that the one



Yvonne with her 8-year old OTTB Kenny is all smiles after a successful cross-country run in an Eventing competition.

prior incident of the horse spooking does not rise to the level of a dangerous propensity. It is simply a horse behaving as a horse with no duty on the part of the stable operator. However, in another case, a trail guide intentionally provoked the horses to gallop without warning the other riders and the Court found this may be so reckless as to be totally outside the range of the ordinary activity involved in a ride provided by a commercial riding stable.

Commercial operators have an increased duty to inquire of a rider's experience and abilities. However, where a social host entertains a guest who represents she has ridden before, the host need not conduct an interview challenging her experience. Social hosts would not let guests ride a horse on their property if they had to conduct an in-depth interview to avoid liability. The Court is not interested in "chilling" the sport of horseback riding in this manner.

Limit Your Liability – Employ Best Practices

A number of "best practices" may limit your liability for equine activities whether you are a commercial operator or social host.

Inspect the facility for holes, loose or broken fencing, and other riding-type hazards and repair these conditions or provide warnings of their location. Always take the time to discuss a rider's experience prior to mounting and assess the match of horse and rider at the beginning and throughout the ride to confirm their safety together.

Finally, a rider and other participants can expressly acknowledge the assumption of risk through an enforceable signed liability release. Yes, they are "worth more than the paper they are written on!" If property drafted and signed, a written waiver can apply to not only riders, but even visitors, spectators, volunteers, and guests. The next edition of "Legal Bits" will provide a detailed outline of what should be in a written liability release for the ultimate equine activity liability protections. Do not miss it!

Keep doing what you are doing with horses – just do it better! Those are the Legal Bits for today.

Please see their ad on Page 43.

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