Civil Liability for Animals

Juliet Chevalier-Watts

Introduction

Animals are in their own category for the purposes of civil liability. At common law this was referred to as “scienter”, which was based on the keeper’s knowledge of the animal’s dangerous propensities, with liability arising if the animal belonged to a dangerous species, or the keeper knew of its dangerousness.

The Animals Act 1971 abolished scienter, replacing it with a statutory code of liability, although many of the common law principles of scienter remain in the legislation.

This paper considers whether the Act is “posing as many problems in animal cases as under the common law principles which preceded it”,¹ by critically assessing the evolution of the common law through to its legislative replacement, as detailed below.² Part 1 explores the common law, focusing on issues associated with differentiating between wild animals (ferae naturae) and tame animals (mansuetae naturae), establishing the keeper’s requisite knowledge of danger, and the appropriateness of the common law in modern times. Part 2 examines the legislative replacement for scienter. First, it considers the statutory definition of wild and tame animals and, in particular, the implications of that definition for genetic modification and cloning, domestication and hybrids. It then addresses the most complex part of the Act, s 2(2), which is concerned with liability for non-dangerous animals. That subsection is broken down into its component sections, and each one analysed with reference to decided cases and academic opinion. As will be shown, s 2(2)(a) focuses on whether courts have adopted a too simplistic approach in their interpretation, and the issue of likelihood of damage. S 2(2)(b) is the most complex section of the sub-sections and addresses, inter alia, causation and foreseeability.


² This paper was inspired by the excellent, seminal work of the late Professor Glanville Williams, who laid the foundations for such an area of discussion. See G L Williams, Liability for Animals (Cambridge University Press, 1939).
and the interpretation of “characteristics”. S 2(2)(c) concerns the keeper’s requisite knowledge and the paper explores issues associated with acquiring that knowledge, and the defence of ignorance. Part 3 considers how successful legislation has been in clarifying the common law, alternative courses of action and arguments for and against reform of the law. That is followed by the conclusion.

I. The Common Law

Historical Origins

“In the beginning was the medieval writ: quod defendens quondam canem ad mordendum aves consuetum scienter retinuit.”

The basis of this principle is knowledge: the owner is liable for damage caused by the animal if aware, in advance, of the animal’s dangerous propensity.

The origins are “shrouded in the mists of time” with evidence of its use as early as Biblical times:

... if the ox were want 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 shall be put to death.

This refers to the requirement of the owner’s knowledge of an animal’s propensity for harm and, if that knowledge is proven, then the owner and animal will be punished.

Scienter draws a distinction between ferae naturae (wild animals) and mansuetae naturae (tame animals). The former belong to wild species considered dangerous, where the keeper is strictly

---

4 Ibid
6 Liability today does not require such extreme punishment.
liable for damages or injury caused by the animal.\(^7\) The latter refers to tame animals, with liability dependent on establishing the requisite knowledge.\(^8\)

**Wild Animal or Tame Animal?**

The test of whether an animal is *ferae naturae* is whether the species is a danger to mankind.\(^9\) However, this caused judicial difficulties due to its inflexible nature, as “that decision was made with regard to the species and not to the particular animal and that danger to mankind was the sole criterion of wildness.”\(^10\) These issues appear rooted in history, especially regarding dogs.

Canine domestication occurred over four thousand years ago and Renaissance manuscripts denote domesticated dogs in Europe.\(^11\) Socially, dogs appeared tame and, if feral dog packs ever existed in Britain, they were extinct by the 16\(^{th}\) century. However, this did not necessarily correspond with their legal categorisation as dogs were still *ferae naturae* in the 17\(^{th}\) century.\(^12\) If, therefore, there were discrepancies in finding dogs wild or tame, there must also have been judicial discrepancies in determining liability for injury caused by dogs.

The dichotomy of their classification may be related to their social value. In medieval times, only animals with food or draught value were held to be capable of ownership; dogs had neither value. By the 16\(^{th}\) century,\(^13\) dogs were still relatively valueless, but served some purpose and could be viewed as a lesser form of *ferae naturae*, thus capable of being owned.

By 1593\(^14\) certain breeds of dog were of value to man and,

---

7 Except in limited circumstances, including an act of God.
8 Cook, *op cit*, p 146.
12 Cook, *op cit*, p 143.
13 *Filow’s Case* [1520] YBT 12 H8 (Trinity).
14 *Ireland v Higgins* [1593] Cro Eliz 125.
therefore, tame. Chambers v Warkhouse\textsuperscript{15} confirmed this judicial move towards determining dogs’ tameness. Shortly afterwards in Mason v Keening\textsuperscript{16} it was again agreed that certain dogs were valuable, except mongrels. So, in the 18\textsuperscript{th} century, distinctions between wild and tame animals were still uncertain.

Interestingly, Mason “may also be noted as one of the seminal determinations in the development of liability for scint;\textsuperscript{17} where it was agreed that there was:

\begin{quote}
   a great difference between horses and oxen … and dogs; the former the owner ought to confine, and take all reasonable caution that they do no mischief; but otherwise of dogs before he has notice of some mischievous quality.\textsuperscript{18}
\end{quote}

There, then, was acknowledgement of the requirement of knowledge when concerned with any “mischievous quality” of a dog.

By the 19\textsuperscript{th} century dogs were viewed as domesticated, as agreed in Falkland Islands v R\textsuperscript{19} and then restated in Nye v Niblett\textsuperscript{20}. However, the option to determine a dog as “ferae naturae” was still available if the dog could be stated as having “reverted to a fully wild state.”\textsuperscript{21}

Interestingly, although the civil law had agreed, for the most part, the concept of the domesticity of dogs, it was not until the passing of the Larceny Act 1861 that the criminal law no longer accepted a distinction between domesticated animals and dogs.\textsuperscript{22} However, this paper is about civil liability and, so, criminal law distinctions will not be analysed here.

By the 20\textsuperscript{th} century canine domestication was largely resolved,

\begin{thebibliography}{9}
\bibitem{1692} [1692] 3 Lev 336.
\bibitem{1700} [1700] 12 Mod 332.
\bibitem{1864} Cook, \textit{op cit}, p 125.
\bibitem{1918} 1 Ld. Raym 606 at 608.
\bibitem{1864} [1864] 2 Moo PCC (NS) 266.
\bibitem{1918} [1918] 1KB 23.
\bibitem{1864} Cook, \textit{op cit}, p.127.
\bibitem{130} \textit{Ibid}, p 130.
\end{thebibliography}
but other species still raised issues as to whether they were a “danger to mankind”, as shown by McQuaker v Goddard and Behrens, concerning camels and elephants, respectively. Theoretically, the presumption may be that, as neither species is native to, nor domesticated in, Britain, they would be a “danger to mankind”. However, “authority rather than reason” has generally settled this, suggesting this area is subject to discretion.

In McQuaker, the claimant was bitten severely whilst feeding a camel at a zoo. The court concluded that camels do not exist wild anywhere and, therefore, must be domesticated, even in Britain, as “there were evidently no wild ones in England and Wales”. This startling conclusion that a large, non-indigenous animal in Britain may be mansuetae naturae meant the claimant could only have succeeded if he could have proved either the defendant’s negligence or knowledge of the camel biting whilst being fed. As the case stood, the court found for the defendant.

However, Tutin v Chipperfield Promotions Ltd has now reversed this principle. There, an actress injured her back after falling from a camel in a race. Camels were held to be dangerous because they were undomesticated in Britain although domesticated in other countries. This is a logical approach to the categorisation of large, non-indigenous species. Interestingly, it is now accepted that camels may exist in the wild. It is, therefore, perhaps unfortunate that this information was not available at the time of McQuaker.

The court’s approach in Behrens reflects a more logical approach in determining “danger to mankind”. Here a trained Burmese elephant, frightened by a dog, injured two people and killed their dog; the same dog which had startled the elephant. The elephant was confirmed ferae naturae, despite the docility of

23 [1940] 1 KB 687.
25 Smith v Cook [1875] 1 QBD 79 at 82.
26 Cook, op cit, p 135.
29 Wild Down Under (2004), BBC2, 3rd August, 20:00.
Burmese elephants in comparison with African elephants,\(^{30}\) and the tameness of this particular elephant.\(^{31}\) Its tameness and fearful behaviour, as opposed to aggression, were irrelevant in determining its dangerous propensities. Thus, its owner was held strictly liable.

Behrens and McQuaker show that \textit{scienter} only takes into consideration a species as a whole, but not individual circumstances. The elephant was both tame and highly trained; the camel was untrained and in a zoo; yet all camels were \textit{mansuetae naturae}, and all elephants, regardless of disposition and training, \textit{ferae naturae}.\(^{32}\)

If a court confirmed an animal was \textit{mansuetae naturae}, the next consideration would be that of the application of \textit{scienter}. It is to this subject that this paper now turns.

\textbf{The Principle of \textit{Scienter}}

The common law divided animals into two categories: Buckle v Holmes confirmed that “there was no authority for recognizing a third class of animals partly \textit{mansuetae naturae} and partly \textit{ferae naturae}.”\(^{33}\) Where the animal was \textit{mansuetae naturae}, then strict liability applied only if the owner knew of their animal’s dangerous propensity.\(^{34}\) This paper now considers the difficulties in establishing the pre-requisite knowledge required of the animal’s owner.

\textit{Scienter} is “well-illustrated by reference to”\(^{35}\) Farndon v Harcourt-Rivington.\(^{36}\) There the defendant left his Airedale terrier alone in the car. The dog jumped around, smashing a glass panel,

\(^{30}\) As confirmed in recent studies: D Koehl, “Elephant Training”, in \textit{Absolute Elephant} (2005), at www.elephant.se/elephant_training.php accessed at 17/05/05.

\(^{31}\) [1957] 2 QB 1 at 2.

\(^{32}\) \textit{Ibid.} The Animals Act 1971 aimed to reduce the old law’s inflexibility, although it is suggested in Part 2 of this paper that common law principles have been “perpetuated in statutory form.” See Cook, \textit{op cit}, p 147.

\(^{33}\) [1926] 2 KB 125 at 126.


\(^{36}\) [1932] 48 TLR 215 (HL).

\(^{37}\) The largest breed of terrier.
whereupon flying glass damaged the claimant’s eye as he walked past. The court confirmed the dog was not dangerous. So, the defendant could not have had knowledge of the dog’s mischievous nature; thus, he was not strictly liable.

However, applying *scienter* has not always been straightforward. *Buckle* highlights difficulties associated with establishing the required knowledge. Here, a cat killed the claimant’s birds. The claimant failed to establish the defendant knew of the cat’s propensity to kill, thus failing in his claim under *scienter*. One may wonder at the judges’ acceptance of the defendant’s, perhaps unrealistic, perception of the nature of cats, but *scienter* requires knowledge of an animal’s vicious tendency and this case, therefore, highlights difficulties associated with establishing such knowledge.

Interestingly, cats were “the spoiled darlings of the law,” pre-1971 and the Animals Act 1971 was supposed to address just this particular issue. But, there are no reported cases yet, where a cat’s owner has been sued successfully.

In spite of that, even if the defendant in *Buckle* had admitted knowledge of his cat’s propensity to kill, the problem for the claimant would have been, during that period, “considerable debate as to whether there could be liability under the *scienter* action, for injury caused by a vice natural to the species of the animal.” In other words, where an animal displayed natural characteristics, which caused injury, the owner may not be liable. According to *Buckle*, “the owner of a cat is not rendered liable by the mere fact that the animal does damage in following a natural propensity of its kind to do damage.” This overruled previous decisions where owners were liable when animals “acted in accordance with the generally accepted nature of the species.” These cases include a ram butting an individual and a bull attacking a man sporting a red

---

39 Ibid.
41 [1926] 2 KB 125 at 130, *per* Atkin, LJ.
42 North, *op cit*, p 50.
handkerchief.\textsuperscript{44} It appeared, as case law evolved, that redress for claimants became more difficult.

North goes further to say that "knowledge of the natural tendency of the animal to cause the harm in question was not sufficient."\textsuperscript{45} So, even if the defendant knew of a mischievous tendency specific to that species, liability may not be established. \textit{Fitzgerald v E D and A D Cooke Bourne (Farms) Ltd}\textsuperscript{46} confirms this. There a filly\textsuperscript{47} knocked down and injured an individual. The defendant acknowledged that fillies were generally playful; therefore, this specific filly was acting naturally. Thus, knowledge of that specific tendency was not sufficient to establish \textit{scienter} and the defendant was not liable.

Case law suggests that \textit{scienter} encourages owner ignorance, in Cook's words, "in some totally unrealistic fashion, ignorant of the nature of their property until that property had displayed a vicious, ferocious or merely mischievous propensity at the expense of a neighbour or other animal."\textsuperscript{48} Goddard LJ in \textit{Hughes v Williams}\textsuperscript{49} expressed concern about the apparent impunity with which a dog may bite without recourse, so long as the owner is ignorant of the dog's propensity to bite. \textit{Talents v Bell}\textsuperscript{50} explores this theory further, evaluating the concept of characteristics in species and breeds, and the requirement of knowledge associated with \textit{either} breeds \textit{or} species. There, the defendant's dogs, a Lurcher and a Beagle, both specifically hunting breeds, killed the claimant's rabbits, and the court questioned whether characteristics were explicit to a breed or a species. It was argued that, since both Lurchers and Beagles were hunting dogs, the defendant should have known of their propensity to kill and, if he knew of the specific nature of those breeds, then he would be liable under \textit{scienter}. The court, however, stated that there could be no distinction between

\textsuperscript{44} \textit{Hudson v Roberts} [1851] 6 Exch 697.

\textsuperscript{45} North, \textit{op cit}, p 50.

\textsuperscript{46} [1964] 1 QB 249.

\textsuperscript{47} A young female horse under the age of 3.

\textsuperscript{48} Cook, \textit{op cit}, p 143.

\textsuperscript{49} [1943] KB 574.

\textsuperscript{50} [1944] 2 All ER 474.
breeds of dog; thus, no breed could be assumed to have any more hunting instincts than any other breed and, as the defendant had no knowledge of his dogs’ propensity for mischief, the action failed.

Interestingly, post-1971 case law suggests that, “where an identifiable breed existed, such as Border Collies, the relevant comparison should be made with that breed.”\(^5\) The evolution of the law relating to this issue will be addressed in Part 2.

Some decisions, then, have led to apparently “quite unreasonable results”\(^5\) and appear to support the perception of owner ignorance. Indeed, the judiciary expressed concern that the common law improperly offered more protection to animals than to human beings, an unacceptable development.\(^5\) This paper now addresses that issue.

**The Application of the Common Law and its Implications in a Modern Society**

Evidence of this criticism is apparent in *Hughes*, where the defendant’s horses damaged the claimant’s car after escaping onto the highway. The judges “expressed dissatisfaction with the existing law,”\(^5\) claiming this law “is not well adapted to modern conditions”\(^5\) as it takes no account of the modern phenomena of busy roads.

*Brackenborough v Spalding UDC*\(^5\) bound the court where “there is no duty on the owner or occupier of land adjoining the highway to prevent animals on it from escaping onto the highway.”\(^5\) It was Lord Greene who confirmed that the rule was binding on the court.\(^5\)

This law might have been appropriate in times of quieter

---


\(^5\) Cook, *op cit*, p 141.

\(^5\) *Hughes v Williams* [1943] KB 574 at 575

\(^5\) Cook, *op cit*, p 141.

\(^5\) *Hughes v Williams*, *op cit*, at 579-580.

\(^5\) [1942] AC 310.

\(^5\) *Ibid* at 321.

\(^5\) *Hughes v Williams*, *op cit*, at 576.

64
roads, but the effect of landowners not having a duty to prevent straying animals was that innocent parties would have little or nor redress after suffering subsequent damage. Lord Greene highlighted the possible consequences:

A farmer who allows his cow to stray ... onto his neighbour’s land, where it consumes a few cabbages, is liable in damages ... but if ... it strays onto the road and causes the overturning of an omnibus, with the death or injury to thirty or forty people, he is under no liability at all. 59

This hardly seemed “a satisfactory state of affairs in the 20th century” 60.

_Scienter_ cannot be applied “when the only thing normally to be expected from the animal is to cause a blundering obstruction of the highway.” 61 Therefore, the common law offers little remedy even in blatantly dangerous situations, which confirmed _Heath’s Garage Ltd v Hodges_, 62 where a sheep’s harmlessness meant it was unlikely to collide with vehicles; thus, no liability could be attached. Again, this was subjected to criticism in _Hughes_ 63 but their Lordships could not “depart from the rule” 64 and concluded that the common law offered little remedy for injured parties.

Goddard LJ highlighted further criticisms, stating that the Dogs Act 1906 conferred liability on a dog’s owner if it bit an animal, and yet this did not extend to the biting of humans so long as the owner could disprove the requisite knowledge. This provides further evidence that the law perpetuates owner-ignorance and its apparent neglect of an innocent party. 65 The law infers animals

59 Ibid.
60 Ibid.
61 Ibid.
63 Hughes v Williams, op cit, at 576.
64 Ibid.
65 Ibid at 579.
“require more protection than human beings”, an inference unacceptable in modern times. So, Goddard LJ hoped:

... when the Law Revision Commission meets again after the war, if no other step has been taken in the meantime, it may be possible to bring before it the law with regard to animals, and, if necessary, have it altered by legislation.

It is perhaps unfortunate for the claimant in *Searle v Wallbank* that the common law remained unchanged. However, although this case confirmed *Hughes*, it was less critical of the law. There, a cyclist suffered serious injury after colliding with an escaped horse. The judges confirmed that common law placed no duty on the defendant to maintain fences and consequently he was not liable. *Scienter* also had no application as the horse was not known to have a vicious disposition.

*Prima facie*, the law appears unjust. Viscount Maughan, however, provided a hitherto unconsidered perspective, taking into account the development of highways over the centuries. The Statute of Wynton 1285 provided highways ought to be unenclosed to reduce hiding places for highwaymen. A multitude of subsequent Acts dealt with grazing rights and the provisions of roads and, whilst some made provision for ditch-clearing and hedge-cutting, there were no provisions “for the repair and maintenance of hedges and fences”. Thus, the legislation had no intention of imposing liability. Highways were largely developed for landowners to transport goods and livestock, and hedging and fencing, being for animal-containment and prevention of trespass, were to be

---

66 Ibid at 580.
67 Ibid.
68 [1947] AC 34.
69 Including the Statute of Merton and the Statute of Westminster.
70 Highway Act 1835.
71 *Searle v Wallbank* [1947] AC 34 at 349.
72 Ibid.
maintained by landowner’s in their own interests.\textsuperscript{73}

Consideration was then given to the practicalities of imposing liability to maintain such enclosures. Should an occupier be liable for enclosures along bridleways or barely-used roads, and what height should these enclosures be as horses can jump considerable heights? Is it reasonable to expect an occupier to inspect every stretch of enclosure, which may include many hundreds of acres, or to pre-empt where an animal might force an escape?\textsuperscript{74} Therefore, the law seemed well adapted to the times in which it first developed.

However, the issue still remained that it appeared to offer little remedy to an innocent bystander. This was put into perspective thus: motorists and cyclists did not have a \textit{prima facie} right of action\textsuperscript{75} because of their general duty to exercise reasonable care in using roads and because “accidents due to straying animals” were “extremely rare”,\textsuperscript{76} even with the “advent of fast traffic on made-up roads.”\textsuperscript{77}

Also, people have long been \textit{prima facie} liable if their cattle or horses, by their negligence, strayed upon the land of another and caused damage to herbage there.\textsuperscript{78} That encouraged fence maintenance. Therefore, imposing liability on landowners in such rare circumstances seemed unduly impractical.

Interestingly, similar principles were applied recently in \textit{Jaundrill v Gillett},\textsuperscript{79} where the horse’s owners were not liable when it caused injury after escaping, suggesting common law perspectives may still be relevant in the present century, even taking into consideration modern roads and the heavy burden of traffic.

So, common-law principles may be “shrouded in the mists of time”, but the key principles, even from the outset, have been establishing \textit{scienter} and distinguishing between wild and tame animals. The former raised issues with owner-ignorance and specific

\begin{itemize}
  \item \textsuperscript{73} \textit{Ibid} at 350.
  \item \textsuperscript{74} \textit{Ibid} at 352.
  \item \textsuperscript{75} \textit{Ibid} at 353.
  \item \textsuperscript{76} \textit{Ibid}.
  \item \textsuperscript{77} \textit{Ibid} at 352.
  \item \textsuperscript{78} \textit{Ibid}, at 350.
  \item \textsuperscript{79} \textit{The Times}, 30 January 1996.
\end{itemize}
traits of a breed/species and the latter issues concerning wild and tame animals. This section has indicated the unsuitability of the common law in modern times, where animals’ rights appear to supersede human rights. However, Searle suggests the law was effective, and imposing changes would be impractical and possibly unjust.

In light of such criticism and uncertainty, statutory validation was required in order to appease public pressure and to clarify ambiguities.

(II) Statutory Codification

Wild animal or tame animal?

This part considers the legislation on wild tame animals and scienter, and the implications of that legislation in the 21st century. S 2 of the Animals Act 1971 replaces the old categories of wild and tame animals with a new definition, which has its basis in common law. S 2(1) provides liability is strict for any damage caused by an animal belonging to a dangerous species, retaining ferae naturae elements. S 6(2) provides an animal is dangerous if it is a species:

a) not commonly domesticated in the British Isles and;

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

Rather surprisingly, the Act provides no definition of “animal”. North queries whether bacteria would be construed as “animals” for the purposes of the Act.\(^80\) This lack of statutory definition may have implications when regarding contemporary phenomena such as cloning and genetic modification. Questions then arise as to how “animals” created by these methods may be construed for the purposes of the Act.

---

\(^80\) Cook, op cit, p 5.
Genetic Modification and Cloning

Waldron suggests the Act was not designed to address actions arising from genetically-modified animals, and one may question whether such a creation would indeed be classified as an “animal”, for the purposes of the Act. If it were, courts would have to determine whether it might be construed as dangerous or non-dangerous. In these circumstances, it may be that genetically modified animals could be construed as sub-species, following the reasoning offered in *Hunt v Wallis*.

McLeish considers the issue of cloned animals, using the example of Dolly the sheep, as publicised in 1997. Dolly was created from a cell taken from another sheep, a method of creation distinguished from test-tube and sexual reproduction. Would such a creature be an “animal”, for the purposes of the Act, or a product? If the latter, then liability is provided by the Consumer Protection Act 1987, and not the Animals Act 1971. If sexual reproduction and test-tube reproduction are recognised and accepted methods of reproduction, and entirely distinguished from cloning, then can Dolly be an “animal”? S 11 of the Act defines “livestock” as two different combinations of mammals and birds, including sheep; but sheep are not defined. Such finite definition might have provoked ridicule but, unfortunately, the limited definition did not, and perhaps more realistically, could not, take into account such scientific advancements as Dolly the sheep.

Thus, McLeish argues that Dolly cannot be a sheep or an animal, as sheep or animals are “commonly understood to be what we see”, and those things we see, we assume, are reproduced sexually between males and females; therefore, cloning cannot produce “animals”. Following this reasoning, then, cloned

---

84 Ibid, p 683.
85 Ibid.
86 Ibid.
“animals” may be products without liability under the Animals Act 1971.

**Domestication**

The Act focuses on “domestication”, as opposed to common law’s dangerous propensity, although evidence suggests this definition has now created a legal loophole.\(^\text{87}\) Elephants, considered in *Behrens*, thus, fall within s 2(1), which Barker suggests to be too rigid a distinction, taking no account of animals’ particular characteristics.\(^\text{88}\) It must be noted that, although *Behrens* was pre-1971, it remains good law, illustrating the link between the old law and the statutory provisions.

Since the Act’s implementation, new animal species have arrived in Britain and, for all intents and purposes, are now being raised and treated as domestic farm animals, including llamas and alpacas. At what point does a non-indigenous species become a non-dangerous species for the purposes of the Act?

For a species to be dangerous, it must not be “commonly domesticated” in Britain, according to s 6(2)(a), Animals Act 1971. The Oxford English Dictionary defines “domestic” as: “to accustom (an animal) to live under the care and near the habituations of man; to tame or bring under control.” It has been debated whether “domesticated” simply means tame\(^\text{89}\) and North suggests it is “living in or near the habitations of man”.\(^\text{90}\) But, Cantley J, in *Tutin*,\(^\text{91}\) did not approve this as it could apply to foxes and wild rats, neither of which is acknowledged as domesticated, preferring the definition “tame”, although a large aggressive dog could be tame, even if it is fierce. So, rather than the Act clarifying this aspect of the common law, its focus on domestication, as opposed to individual characteristics of an animal, may yet cause judicial uncertainty.

---


90 North, op cit, p 39.

91 (1980) 130 NLJ 807 at 807.
Commonly Domesticated

The question arises as to what level of domestication must be present to satisfy the qualification “commonly”. Should it be a few specimens in several hands, a large number of specimens in the hands of an individual, or contrasting the number of animals of the same species in a non-domesticated state? It is suggested that the first two options should not satisfy the requirement of “commonly domesticated” and, therefore, the latter option may offer a solution. However, this may not actually be appropriate in certain cases, like that of rabbits, which are certainly “domesticated” in Britain but also live wild in their millions, so may not actually be “commonly domesticated”.

However, Pills LJ, in *Hunt*, interpreted “species” to mean “breed”, for the purposes of s 2(2)(b), which may then allow a differentiation between wild and tame rabbits for the purposes of s 6(2), if one concludes that they are different species or sub-species. So, following this reasoning, certain species may be subdivided into sub-species to be interpreted as being dangerous or non-dangerous for the purposes of the Act.

The Act also fails to clarify whether the fact that an animal, eg, a camel, exists in captivity is sufficient to qualify it as “commonly domesticated”. Wild camels do exist in Australia but, elsewhere in the world, they are domesticated. *Tutin* suggested that camels in captivity did not necessarily lose their wild features and their being kept in zoos or circuses did not automatically involve domestication. However, llamas and alpacas are now being farmed, as opposed to being kept purely in zoos and circuses; so, the question remains as to whether the species as a whole should be classified as “commonly domesticated”. Thus, the Act has failed to recognise modern demands of breeding and the influence of fashion on specific animals. As such, the statute only codifies, not clarifies, the common law.

However, it may be prudent for animals the size of llamas to

---


93 Ibid.

94 *Wild Down Under, op cit.*

remain “dangerous” as there is already criticism that certain large farm animals, including bulls, are classified as “non-dangerous” under the Act.\textsuperscript{96} This paper will address this issue relating to non-dangerous animals later.

**Dogs and Domesticity**

The concept of dogs as a dangerous species is again questioned, but this time under provisions of the Act, as opposed to the common law, as discussed earlier. Dogs play a contradictory role in society: they are domestic pets and, paradoxically, bred for their guarding and fighting abilities, being quite capable of causing severe injury, so much so that the Government saw it fitting to enact the Dangerous Dogs Act 1991.\textsuperscript{97}

The rigid distinction between the Act’s definitions of “dangerous” and “non-dangerous” takes no account of an animal’s particular characteristics; therefore, they cannot take into consideration the, sometimes massive, differences between the various breeds of dog. In effect Parliament allows the same immunity for the owner of a Chihuahua as that of a Great Dane.

In much the same way as exotic animals, such as alpacas, are now commonly being kept and bred in Britain, dog breeds are now being imported, which, at the time of the Act’s enactment, were relatively rare in this country. Examples are Neapolitan Mastiffs and Cane Corsos, both of which have strong guarding instincts and weigh up to 150lb.\textsuperscript{98}

The Dangerous Dogs Act may not offer assistance here as it is solely concerned with fighting dogs or dogs of fighting origin, and many of the relative newcomers, such as the two examples given above, have their history in guarding and herding; fighting was a secondary consideration. However, Pill LJ’s interpretation of “species” to mean “breed” in *Hunt*, may offer a solution. Here a Border Collie struck and injured the claimant. Pills LJ narrowed the interpretation of “species” under s 2(2) of the Act to mean “breed”, concluding that Border Collies are not normally dangerous and, as


\textsuperscript{97} Barker, *op cit*, p 148.

the dog had no characteristics not usually found in Border Collies, the collision and injury were as a result of the dog’s misjudgement of speed and direction.

This means, therefore, that those breeds that are relative newcomers to Britain, may be caught under the first limb of s 6(2)(a) by extending Pill LJ’s argument for “species” to s 6(2). The other requirements of s 6(2) may also be fulfilled as they (those breeds) are not “commonly domesticated” in Britain and their sheer size may cause real damage. Behrens confirmed the likelihood of serious damage “does not require or impute any kind of aggressive or vicious tendencies on the part of the animal, or any intent to do such harm”, so the dog would not have to act aggressively, or show intent, but merely cause damage by its behaviour.

It is possible, therefore, owing to Pill LJ’s redefinition, that certain breeds of dog may yet be classified as dangerous for the purposes of the Act. Indeed, as has been noted, the fact that the Government sought to ban breeds, such as the Japanese Tosa, simply adds credence to the view that some of the relative newcomers “have never been properly domesticated animals”, thereby possibly rendering them “dangerous”.

Hybrids

Animals now exist as a result of crossing dogs and wolves and issues arise as to how these animals should be regarded for the purposes of the Act. It is argued that an identified wolf dog hybrid ought to qualify as a dangerous species, but issues remain as to what percentage of wolf blood should be present in the outcross for the animal to be considered dangerous.

In Britain, these hybrids automatically fall under the Dangerous Wild Animals Act 1976 and licences are required to keep such animals. However, breeds such as the Saarsloos Wolfhound, a domestic dog, purport to contain a percentage of wolf blood and, as

---


100 G Exall, “Give a Dog a Bad Name” (1991) 135(21) Solicitor’s Journal 644.

101 Marston (1996), op cit, p.244.

102 Ibid.
yet, licences are not required for them.103

Interestingly, at DNA level, all domesticated dogs are wolves, but there is no method of determining at what genetic level which genes are responsible for which behavioural characteristics.104 Thus, domestic dogs and wolf dog hybrids may be equally dangerous. However, in an unreported case, referring to a wolf dog hybrid, the judge decided a hybrid is one that contains a minimum of 1% wolf blood, thereby differentiating between domestic dogs and wolves. Unfortunately, science suggests wolf hybrids cannot be detected yet through DNA testing; so, quantifying the percentage of wolf blood required in the animal to qualify it as a hybrid may just be academic.105

However, these issues are not modern phenomena: Temple v Elvery106 held a Great Dane cross wolf to be a “domestic dog”, and Sparvier v MacMillan107 confirmed that a wolf cross Husky was a “domestic dog”. So, if hybrids were considered in common law, the question remains as to why statute has not clarified this issue, and how such hybrids should be interpreted.

Marston suggests that wolf dog hybrids are sub-species of the domestic dog and, following the argument that the definition of “species” in s 2(2) could be applied to s 6(2), thereby ensuring consistency between sections, it is possible that one sub-species of a species may fall under dangerous species, and another sub-species of the same species may fall under non-dangerous species.108 This confirms Exall’s opinion, as discussed earlier in this part, that dog breeds new to Britain may, for the purposes of the Act, be classified as dangerous.

This view contradicts Behrens, where the court would not depart from the opinion that all elephants are dangerous animals, regardless of their species. However, as already noted, this view has been criticised as it did not take into account individual characteristics; therefore, the interpretation in Hunt and academic

103 Fogle, op cit, p 244.
104 Western Morning News, 8 July 1997, p 3 at http://www.webheads.co.uk/sleddog/ezine/dna.htm.
105 Ibid.
106 [1926] 3 WWR 652.
107 67 DLR (4th) 759.
opinion suggest that the statute has opened up the classification and one can perhaps take into account characteristics of a species, as opposed to focussing on the broader species. However, a caveat is noted: the fact that a dog is member of a specific breed is not necessarily sufficient in itself for it to be viewed as different from other breeds of dog. So, there may be limitations in this reasoning except, it is submitted, in cases where specific breeds of dog in which aggressive characteristics are actively encouraged, such as fighting dogs, as outlined in the Dangerous Dogs Act. It appears then that the statute has its basis in the common law, but is also independent from it.

Further to the wolf dog hybrids issue, there are relatively few numbers in Britain, and only in the hands of a few keepers; so, even if they are domesticated, they are unlikely to be viewed as commonly domesticated and, therefore, may be caught under the liability of s 2(1).

(b) The Statutory Codification of Scienter

Non-dangerous species are governed by s 2(2) of the Act, under which an animal’s keeper is strictly liable for the damage caused by the animal, except as provided by the Act, if:

a) the damage is of a kind which the animal, unless restricted, 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 head of the household, were known to another keeper of the animal who is a member of that household and under the age of 16.


Thus, all three conditions must be satisfied. In essence, then, the basic principles of liability are:

- the damage must have been likely to be severe;
- the animal must have shown abnormal characteristics;
- these characteristics must be known to the keeper, their servant in charge of the animal or a member of their family under the age of 16; and
- there must be a causal link between the abnormal characteristics and the damage.  

Owing to the complexities of the subsection and the “requirement that each paragraph be satisfied, the obvious approach is to consider them one by one” confirmed the step-by-step approach followed in *Curtis v Betts* where Stuart-Smith LJ noted that, in deciding cases under s 2(2), judges ought to consider each part in turn. This approach was subsequently approved in *Hunt*. Each part of the subsection will now be analysed.

**Section 2(2)(a)**

This subsection “rarely causes problems for claimants attempting to establish liability” although some key cases suggest there may be issues associated with establishing the foreseeability of the damage that the animal may cause.

**A Simplistic Approach**

There are two limbs to paragraph (a), either of which must be satisfied: first, the damage caused by the animal must be the kind of damage which it was likely to cause unless restrained and, secondly, the damage, if caused, must be likely to be severe.

The first key case is *Cummings v Grainger*. The defendant

---

112 Barker, *op cit*, p 150.
113 [1990] 1 All ER 769.
kept a German Shepherd dog to guard his scrap yard. The dog bit the claimant when she trespassed into the yard. Lord Denning MR, although critical of the wording of the statute, adopted a simple approach to the second limb of paragraph (a), stating that a German Shepherd dog is likely to cause severe damage, thereby satisfying the requirements. Barker confirms that the satisfaction of (a) will probably depend to a great extent on the kind of animal involved; therefore, a dog of the size and strength of a German Shepherd is unlikely to cause much judicial debate. However, the Guard Dogs Act 1975 was passed after public concern about guard dogs, such as the one in Cummings, and in light of this subsequent Act, it is likely the Cummings' decision would today be different as it is now unlawful to keep a dog for guarding without restraint or licence. However, these issues are outside the scope of this paper.

The second case is Curtis where Max, a 10-stone Bull Mastiff, bit a young boy. The court held the first limb of paragraph (a) was not satisfied because there was no evidence that the damage was of a kind likely to be caused by the dog, if unrestrained, as it was lazy and docile. However, the second limb was satisfied, since any 10-stone dog with large teeth and jaws would cause severe damage; also, even if the actual damage were minor, (a) would still be satisfied as all that was required was the likelihood of severity.

However, questions are raised when considering a slightly different scenario: a small dog snaps at the heels of an adult, so the damage is unlikely to be severe, yet the tendon is torn and, therefore, the damage is actually severe. These circumstances suggest that perhaps (a) has been interpreted too simplistically and, instead, courts should consider a number of factors, including the following: the actual animal, considering its size and weight; the victim/s, including their age/s and the vicinity of the damage on the victim/s. It is likely, however, that even if the court in Curtis had taken this approach, the defendant would still have been held liable.

115[1977] 1 All ER 104.
116 Ibid at 469G.
117 Barker, op cit, p 151.
119 Ibid, p 24-25.
Curtis relied on the simplistic interpretation of Cummings, and this approach was adopted later in Smith v Ainger, and Hunt, but it was supported, somewhat reluctantly, by the two latter cases as it was thought “to be binding as a matter of judicial precedent”. In reality, it was only Lord Denning MR, in Cummings, who considered paragraph (a), whereas Ormrod and Bridge LJJ did not do so. Therefore, the purported authority of Cummings is not quite so straightforward and may yet be subject to judicial interpretation.

Perhaps this favouring of the “simplistic approach” is a result of public pressure. As the interest in large, supposedly aggressive dogs in Britain grows, so the judiciary must be seen to protect the public even if such protection is administered in too simplistic a fashion.

Nevertheless, North argues that paragraphs (a) and (b) cannot be read in isolation, as the likelihood of an animal causing severe damage must be due to its abnormal characteristics, stated by paragraph (b). However, this argument has flaws: to assess whether damage is “likely to be severe” under the second limb of paragraph (a) presupposes certain characteristics of the animal: size, strength and ferocity, for instance. This does not require an assessment of whether the animal’s characteristics are normal or abnormal. It is suggested then that these questions are solely for paragraph (b), and not for the plainly-worded paragraph (a). So, although the “simplistic approach” to paragraph (a) has been criticised, it is perhaps preferable to the complex approach suggested by North.

The Likelihood of Damage

Smith also considered the semantics of s 2(2)(a). Here, Sam, a German Shepherd cross, lunged at the claimant’s dog, injuring the claimant. Neil LJ held that (a) could be established in two separate
ways primarily because “was likely to” could be interpreted in two ways. In some contexts it may mean “probable” or “more probable than not”; in others it may be interpreted more widely to mean “such as might happen” or “where there is a material risk that it will happen, as well as events that are more probable than not.”  

In the present context, the wider interpretation was adopted as it was determined that Parliament could not have intended that a dog’s keeper could escape liability by establishing that only a small percentage of people had been bitten by Sam in the past, as it was clear from past evidence that Sam had attacked other dogs, and bitten their owners; and to adopt a narrow meaning would depart too radically from the old law.

The court then addressed the two limbs of paragraph (a):

i) whether personal injury to a human being was a kind of damage, which Sam, if unrestrained, was likely to cause; and

ii) whether personal injury to a human being, if caused by Sam, was likely to be severe.

The sort of injury which is referred to in paragraph (a) is caused by direct application of force, but Smith states that it would be unrealistic to distinguish between a bite and the consequences of a knock.

Returning to the court’s question of the likelihood of damage caused by Sam, it was confirmed that a simple approach was the correct approach even though the previous bites to owners were relatively minor. The court agreed that Sam was likely to attack again and, if Sam attacked another dog, it was likely that dog’s owner would intervene and be injured. So, on this basis, the first of the limbs regarding the kind of damage likely to be caused by Sam,

---

126 Ibid.
129 Barker, op cit, p 152.
if unrestrained, was answered in the affirmative.\textsuperscript{130}

With regard to the second limb, it was held that it was unlikely any injury caused by Sam would be severe as previous injuries inflicted by him had been relatively minor. However, in light of \textit{Cummings} and \textit{Curtis}, it appeared that damage caused by large dogs, such as German Shepherds, was likely to be severe. Therefore, even though Neil LJ agreed Sam was unlikely to inflict severe damage, the authority of \textit{Cummings} and \textit{Curtis} meant the second limb of (a) was satisfied.\textsuperscript{131}

It is apparent that courts find little sympathy for dogs’ keepers that inflict damage, and the three cases discussed here highlight an evolution in the interpretation of this section: \textit{Cummings} demonstrates that a fierce breed automatically imposes liability on its owner, \textit{Curtis} demonstrates that a usually docile dog of a fierce breed similarly imposes liability on its owner, and \textit{Smith} demonstrates that a fierce dog of a usually docile breed also imposes the same liability.\textsuperscript{132} Thus, maximum protection is provided for the public in the majority of circumstances.

\textbf{Criticisms of the Simplistic Approach and the Issue of Restraint}

However, a very recent case highlights concerns, once again, with adopting a simplistic approach. In \textit{Mirvahedy v Henley},\textsuperscript{133} where an escaped horse crashed into a car, injuring the driver, the second limb of paragraph (a) was assumed to be satisfied, and therefore was not considered to be an issue. However, Lord Scott\textsuperscript{134} expressed reservations, believing this limb was satisfied too simplistically, as it was assumed the claimant suffered serious injury and that his car was damaged as a consequence of the escaped horse. That apart, Lord Scott suggested escaped horses did not usually injure third parties or, if damage occurred, it was not usually severe, often no more than a dent to a car, and cases of severe damage were

\textsuperscript{130} \textit{Local Government Review, op cit.}\n
\textsuperscript{131} \textit{Ibid,} pp 486-487.\n
\textsuperscript{132} “Liability for Animals” (1990) 2(8) Insurance Law Monthly 8.\n
\textsuperscript{133} [2003] UKHL 16.\n
\textsuperscript{134} \textit{Ibid,} at 98.
very limited. Therefore, the simplistic approach adopted in the previous cases may not take into account essential considerations, as highlighted by Lord Scott and, thereby, social pressures to protect the public may be extending inequitably.

Harwood also questions the issue of “restraint” in s 2(2)(a), which has not been addressed in previous cases. Under paragraph (a), “is it sufficient if the damage is ‘likely’ if the animal is not restrained in the situation in issue”\(^{135}\) as here in Mirvahedy, where a bolting horse is galloping along a road, or “must it be “likely” if it is not restrained at any time?”\(^{136}\) It is not clear how Parliament intended this to be interpreted and Mirvahedy did not address this issue. But, as Harwood highlights, this may yet cause judicial uncertainty in future cases.

**Section 2(2)(b)**

This is “a most complex provision”\(^{137}\) and *Kite v Napp*\(^{138}\) shows that it is subject to misinterpretation. Here, a dog attacked an individual who was carrying a bag. The court established that the damage was of a kind the dog was likely to cause, unless restrained, and the damage was due to the characteristics of the dog not usually found in other dogs, except in particular circumstances, that of attacking persons with bags; so, the claimant was successful. However, characteristics associated with “particular circumstances” only apply if those characteristics are shared with other animals of the same species;\(^{139}\) attacking persons with bags is not shared with other dogs. Thus, *Kite* has been stated to have been misconceived by oversimplifying the paragraph, no matter how welcome that decision might have been.\(^{140}\)

As in s 2(2)(a), s 2(2)(b) can be broken down into two component limbs: first, whether the animal’s characteristics caused

---


\(^{136}\) Ibid.

\(^{137}\) Barker, *op cit*, p 152.

\(^{138}\) *The Times*, 1 June 1982.

\(^{139}\) Marston and Freer, *op cit*, p 30.

\(^{140}\) Ibid.
the damage; and secondly, whether they were abnormal characteristics, in comparison with animals of the same species. In other words, the court must consider whether the animal is displaying permanent or temporary characteristics and, if so, then the damage must be a result of these characteristics. 141

Before addressing the issues associated with interpreting these characteristics, we first consider whether paragraph (b) is in fact suggesting causation or foreseeability.

Causation or Foreseeability?

Logic dictates that paragraph (b) refers to causation, as it was because of those characteristics that the animal caused that damage. However, the reference to “likelihood” suggests foreseeability, not causation, meaning a keeper could be liable if the characteristics of the animal made it likely to cause damage, or likely that the damage would be severe, even if the damage actually caused was not due to those characteristics. 142 For example, a keeper knows his bitch, when with her puppies, may bite strangers; the bitch does bite a stranger, and damage of that kind does occur, but the bitch does not have puppies at that time; so, there is no causative link between the two situations, as addressed by Stuart-Smith LJ in Curtis, where he expressed concern over this possible interpretation of paragraph (b), because any findings could then be unreasonable. 143

Nourse LJ, also in Curtis, suggested these problems resulted from a drafting error and that the “likelihood of damage” was erroneously reproduced in paragraph (b) from paragraph (a), and that it should be simply read as: “the damage was due to characteristics”. 144

The Law Commission’s Report, upon which the Act was based, appeared to support both causation and foreseeability. On two occasions, the Report stated that liability should follow as a result of characteristics known to the keeper, thereby suggesting causation:


142 Barker, op cit, p 154.

143 [1990] 1 All ER 769, at 778.

144 Ibid, at 777.
Strict liability should be imposed in respect of injury or damage done by an animal...if a particular animal had known dangerous characteristics from which the injury or damage in fact resulted\(^{145}\)

and

… an animal not belonging to that category (dangerous species) should nevertheless give rise to strict liability in respect of injury or damage which it causes if that damage results from dangerous characteristics of the particular animal …\(^{146}\)

Unfortunately, this approach is inconsistent and, on at least two separate occasions, the Report refers to the foreseeability of damage as a result of the animal’s characteristics, by stating “make it likely”\(^{147}\) and “made it likely”\(^{148}\).

So the very basis of the Act is unable to support either causation or foreseeability unequivocally. However, case law appears to favour causation, as expressed in *Smith* and later in *Hunt*. In the light of these authorities and the fact that it is a more logical process, the causation approach is preferable.\(^{149}\)

Returning to the issue of the two limbs of paragraph (b), this requires comparing the characteristics of the animal involved and those of the same species, ie, whether the characteristics are normal or abnormal, and temporary or permanent. Determining whether they are permanent characteristics is relatively straightforward and will invariably concern generally aggressive animals.\(^{150}\) This confirms earlier research\(^{151}\) where, logically, animals belonging to non-dangerous species will be unlikely to fulfil the first limb of paragraph (b), except in circumstances such as *Cummings*, where the

---


\(^{146}\) *Ibid*, p 12 paragraph 17 (my emphasis).

\(^{147}\) *Ibid*, p 12, paragraph 18 (i).

\(^{148}\) *Ibid*, p 41, paragraph 91 (iv).

\(^{149}\) Barker, *op cit*, p157.

\(^{150}\) Whalan, *op cit*, p 5.

\(^{151}\) Barker, *op cit*, p 158.
guard dog acted aggressively towards anyone, which probably would have satisfied the first limb of paragraph (b).

It is more likely that attention will focus on the temporary characteristics under the second limb of paragraph (b), including unpredictability or unreliability. Two leading cases offer opposing views, which this paper now explores.

The “Cummings versus Breedon” Argument

*Cummings* suggested that paragraph (b) might be satisfied in one of two ways:

... either the risk was due to characteristics not normally found in animals of the same species; or the risk was due to characteristics which the animal would not normally have, but does have in particular circumstances – such as when guarding its territory or young. 152

The court was satisfied that abnormal characteristics need not be abnormal for the species, and the dog in question reacted in a way one would expect of a guard dog at particular times, and in particular circumstances, that of biting the intruder. 153

However, in *Breedon v Lampard*,154 Lloyd LJ stated it was unreasonable to impose liability on a keeper when an animal behaves in a perfectly normal way for its species. Here, a horse kicked out, breaking the leg of a rider of another horse being ridden behind. It is normal behaviour for horses to kick when crowded from behind; therefore, this horse displayed normal temporary characteristics.

The argument for *Breedon* is that it makes no sense for Parliament to state that normal behaviour avoids strictly liability; yet, as soon as that behaviour occurs in particular circumstances, liability is then attached. 155 On the other hand, the argument for

---


Cummings is that it accords more easily with the Act’s language, and that it was logical that Parliament intended to impose strict liability for animals of non-dangerous species which in some way were dangerous, be it by their size or weight, thereby offering the greatest method of protection for an innocent party.\textsuperscript{156}

However, as case law developed, uncertainty continued to surround paragraph (b) and, as will be seen, it is only in the last couple of years that the arguments for and against the Breedon versus Cummings approaches have been settled in Mirvahedy.

Before addressing that final stage, this paper now explores the case law preceding Mirvahedy to analyse the chronological interpretations of s 2(2)(b).

Expansion of the “Cummings Approach”

*Curtis* expanded Cummings, adopting the “dual test construction”,\textsuperscript{157} ignoring the Breedon approach; it was the second limb of this test with which Curtis was concerned. In particular, questions were raised over what actually encompasses a dog’s territory. The defendants in that case lived in school buildings where family members were school caretakers. Max was a pet, but also roamed the schoolyard at night, behaving aggressively towards passers-by. Slade LJ was satisfied that Max considered the yard to be his territory,\textsuperscript{158} thereby satisfying the second limb of (b), as mastiffs were not generally aggressive, except in particular circumstances or at particular times, namely when defending their territory.\textsuperscript{159}

However, the attack did not happen in the yard: Max was restrained, standing behind the defendant’s car, into which he was to be loaded. The claimant approached Max, whereupon he attacked. Therefore, assuming the causation approach to satisfy paragraph (b), it had to be shown that the damage resulted from “particular circumstances”, in other words, from Max defending his territory. So, what was his territory? On this occasion, not the schoolyard as


\textsuperscript{157} [1990] I All ER 769, at 175.

\textsuperscript{158} Ibid., at 774.

\textsuperscript{159} Barker, op cit, p 158.
he was outside it and had never shown any prior aggression outside that yard. Perhaps the back of the car was his territory, as acknowledged in the first instance?

However, this overlooks the fact that dogs tend to behave territorially when actually inside a vehicle, not standing on a highway, near the said vehicle, confirming the reticence displayed by the Court of Appeal although none of the judges was willing to overturn the decision. Nourse LJ justifies his decision by stating that the judge at first instance heard witnesses first hand. Stuart-Smith and Slade LJJ based theirs on one witness’ belief that mastiffs protected their environment, which might be larger than that in which they are confined. This approach is flawed: if it had been decided that particular circumstances leading to abnormal temporary characteristics are those of Max defending his “territory”, then it would be inconsistent to judge an animal’s characteristics on the basis of its protecting its “environment”, which is undefined and potentially infinite, questioning then whether this behaviour was in fact in “particular circumstances”.

Barker’s opinion supports earlier research, suggesting that the Court of Appeal’s findings were flawed in relation to paragraph (b). This research suggests there is a simpler approach which achieves the same results: if one considers the inter-relationship between paragraphs (a) and (b): it was fairly easy to establish the requirements of paragraph (a), taking into account Max’s size and strength, and to establish paragraph (b), all one had to consider was that, although Max was generally docile, evidence pointed towards his aggressive, territorial nature, which could encompass the back of a familiar vehicle, thereby fulfilling the requirement of causation.

However, it is submitted that, whilst the decision in Curtis appears just (after all, a boy suffered severe injuries), the approach appears too simplistic, as does the approach offered by Marston, because it includes situations which cannot be defined, thereby

160 Ibid, p 159.
161 [1990] 1 All ER 769, at 777.
162 Ibid., at 775 and 779, respectively.
163 Barker, op cit, p.158.
164 Marston & Freer, op cit, p 30.
"raising impossible questions of degree". In other words, can a dog's territory ever be defined, or must it be subject to discretion? Curtis suggests the latter, in which case, as welcome as the actual decision may be, this case has done little to clarify this section of the law.

A Question of Characteristics

Hunt sought to clarify the issue of comparing "animals of the same species" as, to satisfy paragraph (b), there must be a causal link between the characteristic and the injury. According to the court, Collies are lively, agile dogs and, to make the relevant comparison, dogs must be compared with the same breed, and not the species in general, as Collies are agile and not generally dangerous. This logical approach may clarify the issue, but such comparisons will be irrelevant if mongrels cause damage since there can be no specific breed comparison. The only way to apply paragraph (b) will be by comparing the mongrel in question with "other animals of the same species", in other words, dogs in general, thus rendering Hunt's interpretation irrelevant in some circumstances.

The question of characteristics arose again in Gloster v Chief Constable of Greater Manchester Police, where a police dog, pursuing a suspect, slipped its collar, and bit another police officer. This case analysed the meaning of "characteristics" as it was felt that Curtis did not provide sufficient assistance. The issue (in Gloster) was whether the characteristics were a result of training or the ability to respond to training. Pill LJ concluded it was the latter because it was a manifestation of a characteristic, not the character itself. Further, it was a combination of circumstances that led to the bite,

165 Barker, op cit, p 160.
167 Barker, op cit, p 161.
169 A German Shepherd dog called Jack.
170 Begley L, op cit, p 11.
not the actual characteristics, thereby no causal link could be established; the appeal failed.

Pill LJ also concluded that s 2(2) “was not intended to cover German Shepherd dogs acting in accordance with their character”, that of responding to training, and accepting this could leave the public without a remedy under the Act. However, he countered that police dogs’ social purpose outweighed such risks, highlighting the balance between public policy and social requirements.

Conversely, Hale LJ opted for the second option, considering that, but for the training, Jack would not have bitten. She concluded the claimant’s appeal should fail, but because it did not fall within s 2(2)(a), as it was unlikely the dog would cause this type of damage, rather than because it fell under s 2(2)(b).

Although both judges rejected the claimant’s arguments, the issue of “characteristics” has not been satisfactorily resolved as the arguments were rejected for entirely opposing interpretations of “characteristics”.

“Cummings versus Breedon”: The Argument Settled?

Mirvahedy attempted to resolve the issues associated with paragraph (b). In that case the defendant’s horses escaped and one of them bolted into the claimant’s car and injured the claimant. There was no negligence on behalf of the defendant, Mr. Henley, as the fencing was adequate. The House of Lords upheld the Court of Appeal’s decision by a narrow majority. This paper now examines whether this decision has clarified s 2(2)(b).

The Court of Appeal held that the accident was caused by the particular characteristics of the horses once they had been panicked into escaping, and it was exactly because they were behaving in an unusual way due to the panic that the damage was caused.

---

172 Ibid, at 119-120.
173 Ibid.
174 Ibid, at 120
175 Ibid, at 122.
House of Lords confirmed that this behaviour was usual for frightened horses, thereby adopting the Cummings approach but rejecting Breedon.  

The logic of Cummings is that dogs do not usually bite people and, when they do, it is unusual. Similarly, horses do not generally bolt; so, when they do, these characteristics are not usually found, except in particular times or circumstances. Following this reasoning then, the horses behaved in an unusual way and it was this panic that caused the damage. This case is distinguished from the similar facts of Jaundrill where the mere presence of the horse on the road caused the accident, not the actual characteristic of the horse. Indeed, it was held that the real cause of the accident was the malicious release of the horses, in contrast with Mirvahedy, where the reasons for the horses’ escape were never determined.

Lord Scott, dissenting, suggested that the horse’s behaviour was entirely normal for horses and just occurred in abnormal circumstances, concluding that there was strict liability for abnormal behaviour in normal circumstances, and for abnormal behaviour in abnormal circumstances, but it could not have been intended that strict liability be imposed on normal behaviour in abnormal circumstances; it was the Act’s intention to impose such liability on “dangerous” animals, not docile animals, with no mischievous propensities, as established with the horse in question.

In effect, Lord Scott approved the Breedon approach. He suggested that adopting Cummings’ dual test approach, preferred by the majority, would lead to peculiar results. For example, if a docile horse was hit by a projectile and bolted, injuring a walker, and the horse’s owner indisputably acknowledged the likelihood of bolting in these abnormal circumstances, that owner would be liable to the third party.

Lord Scott went further, using an example of a police horse

---


181 Mirvahedy v Henley, op cit., para 113.

182 Ibid, para 114.
being jabbed by someone in a crowd. Even a well-trained horse such as this would be likely to kick in these abnormal circumstances, and if it kicked a third party, then strict liability would be imposed.\textsuperscript{183} This example answers the question of liability, referred to by Palmer, when a frightened police horse reverses onto the bonnet of a car, causing considerable damage.\textsuperscript{184} Following the ruling in \textit{Mirvahedy}, strict liability would then attach to the police, a decision unlikely to be welcomed by the police.

Lord Scott also questioned the logic of “particular circumstances”. What criteria would be used to determine when time or circumstances are “particular”? He suggested they might be statistical or subjective. But, if they were the latter, in whose opinion were they so?\textsuperscript{185} Unfortunately, no clear answer was submitted.

This issue is raised again by Harwood: dogs bite in response to certain circumstances only if in the presence of someone to bite; a dog will spend much of its time in its own territory and, so, is likely to guard it. Therefore, is guarding that territory really a special circumstance? As almost any situation could be classified as a “particular time” or “circumstance”, this rationale almost negates the second limb of paragraph (b), rendering this classification arbitrary rather than factual.\textsuperscript{186}

This opinion confirms an earlier criticism of \textit{Mirvahedy’s} interpretation of “characteristics”, arguing that their Lordships erred by equating the horse’s reaction with the characteristic of horses because characteristics which cause a horse to bolt are prevalent in all horses. They do not just arise in particular circumstances; rather, they are characteristics that only promote a reaction in particular circumstances. These characteristics are distinguished from the case of the bitch with pups, where her usual docile nature is altered during the particular time of being with her pups: her reaction is not usual for dogs in general, only in bitches with pups.\textsuperscript{187}

\textsuperscript{183} \textit{Ibid}, para 115.


\textsuperscript{185} \textit{Mirvahedy v Henley}, \textit{op cit}, para10.

\textsuperscript{186} Harwood, \textit{op cit}, p 38.

\textsuperscript{187} Palmer and Vaughan-Jones, \textit{op cit}, pp 591-592.
Thomas rationalises their Lordship’s decision, although not agreeing with it, by claiming it was a policy decision in the light of the current “compensation culture”\textsuperscript{188} confirming a previous opinion favouring this decision: Mirvahedy was innocent and, therefore, should not be expected to accept the cost and suffering caused by an animal’s normal behaviour.\textsuperscript{189}

**Mirvahedy: A Welcome Decision?**

It is submitted respectfully that this decision must be welcomed as their Lordships have provided an interpretation of s 2(2)(b), which has now been followed in two recent equine cases,\textsuperscript{190} and it offers the greatest public protection. Surely animal owners must accept the risks associated with keeping animals?

This decision is sound as regards areas like public paths. But is it the panacea for all animal misdemeanours? This very issue arose in the recent case of *Fry v Morgan*.\textsuperscript{191} Here, a walker sustained injuries whilst walking his dog along a public footpath that ran through a field containing nine horses, and was subsequently kicked by one of the horses. The claimant alleged that he was chased by this horse, and its nose made contact with his back, causing him to lose his balance and he fell into a ditch, containing barbed wire. An equine behaviourist confirmed that the horse was probably being inquisitive, not aggressive, and that the horse was generally docile and had never attacked people previously. The Court concluded that, as the horse was merely being inquisitive, which was not an abnormal characteristic of the horse, and the damage caused by it so acting was not likely to be severe, *Mirvahedy* was distinguishable.

The author submits that this is a logical approach in such a situation of moderate (not severe) damage because to apply strict liability in such circumstances would be extending inappropriately the principles established in *Mirvahedy*.

However, Harwood suggests there would be great difficulty in


\textsuperscript{189} H Palmer and S. Vaughan-Jones, *op cit*, p 591.

\textsuperscript{190} *E (A Child) v Townfoot Stables* [2004] 4 C.L.17 (CC Newcastle); *Bennet v Bellm* [2005] 1 CL 15 (CC (Winchester)).

\textsuperscript{191} 2005 WL 4135328 (CC), [2006] 9 CL 22.
establishing paragraph (b) in the case of a walker being injured by cows: one would have to prove that a cow is likely to attack, assuming the culprit has been identified out of the herd, or that that test has been satisfied for the whole herd! Even more difficulty could be associated with attacks by bulls or stallions, both domesticated animals, and characteristically aggressive. This being so, strict liability will not be imposed as the animals are merely displaying normal characteristics, which is ironic since this is precisely a situation for which strict liability would be deemed most necessary.

The recent case of *Clark v Bowlt* suggests that the application of strict liability in cases involving horses and road traffic accidents is not, perhaps, a foregone conclusion, regardless of whether it may be more appropriate for the innocent party to be compensated, as is implicated in *Mirvahedy*. In *Clark* a horse being ridden along a public road moved inexplicably into the path of a car, resulting in damage to that vehicle. The court concluded that a propensity to move inexplicably, and otherwise as directed, was not a characteristic of a horse. It is submitted with respect that this is questionable because horses are renowned for “spooking”. The court also stated that the relevant characteristic in question was the horse’s weight and, as this was a normal characteristic of the horse’s species, then the requirements of paragraph (b) had not been satisfied. Further, the court considered that the accident was one of unfortunate chance for which no-one was to blame; therefore, there was no liability under the Act.

This decision sits uncomfortably with that of *Mirvahedy*, as in both cases an innocent party suffered damage as a result of a horse on a road. Yet, in *Mirvahedy* this was attributed to uncharacteristic behaviour, for which no-one was to blame, and in *Clark* it was attributable to the weight of the horse, a normal characteristic of the species; thus, that did not attract liability. Such an interpretation could mean that in future cases, where damage occurs due to the size of the animal, then liability will not automatically be found.

---

193 Harwood, *op cit*, p 41.
195 Moving inexplicably, and not as otherwise directed, as is prevalent in prey animals.
It is clear then that the decision in *Mirvahedy* does “give rise to several potential anomalies”\(^{196}\) and certain issues such as causation and characteristics have not been clarified. However, it is difficult to imagine how any interpretation of paragraph (b) would be satisfactory in all circumstances as s 2 can apply to many situations: from bites to accidents and spread of disease; therefore, there is bound to be generalisation in some respects. Perhaps it is prudent for animal owners to bear the brunt of their animal’s behaviour, as opposed to innocent third parties. However, in the light of *Clark*, this pragmatic approach may still be subject to change.

**Section 2(2)c**

This subsection concerns the keeper’s requisite knowledge of the animal’s abnormal characteristics. It is suggested that this section, in particular, perpetuates the idea that a dog is allowed one bite before its owner may be liable.\(^{197}\)

The keeper must have actual knowledge. Constructive knowledge will not suffice: it is not enough that the keeper ought to have known. This knowledge must be acquired before the act, as suggested by “at any time”, and this was the key principle of *scienter*, that of advanced knowledge of the animal’s dangerous propensities, as already stated.

Express knowledge may be acquired by a previous incident, such as in *Smith*, or by the actions of the keeper, such as chaining or tethering the animal or, as in *Curtis*, ensuring care is taken when loading the dog into the car. However, the latter point may be a double-edged sword because, if Max’s owner had not been cautious, they might have been negligent and, by acting cautiously, they were admitting knowledge of their dog’s dangerous propensities. So, although Max had not bitten anyone previously, his owners acknowledged a propensity, which does not support the perpetuation of the “one-bite-allowed” theory.

There must be a causal link between the knowledge of the dangerous characteristic and the manner in which the injury was caused. So, being thrown by a horse known to bite will not result in

---


\(^{197}\) Cook, *op cit*, p 143.
a successful claim. However, as shown by *Mirvahedy*, that link need not be as direct as suggested: it was not clear what had caused the horses’ panic, but all that was required was the defendants’ acknowledgement that horses did bolt if panicked and, because they were experienced horsemen, they knew generally what terrified horses might do. Therefore, liability was established.

This then leads to the question whether, if the owners had been inexperienced horsemen, their ignorance of general horse behaviour would have been a defence? Lord Scott believed this was possible. His Lordship expressed dismay that legislation could impose liability on a responsible keeper, such as the Henleys, but would allow an ignorant keeper to escape liability. In his opinion, paragraph (c) only makes sense if the characteristics are peculiar to the individual animal, not to the species as a whole. Otherwise, the perpetuation of owner ignorance may continue. This opinion may have some basis, as suggested in *Breedon*: the horse which kicked had a red ribbon in its tail, which is a universally accepted equine standard declaring the horse to be a kicker, and yet the owner claimed no knowledge of the horse’s propensity to kick, thereby relying on ignorance, albeit ironically, as the horse was clearly marked as a kicker!

However, the requisite knowledge seems rarely to pose problems for the courts, as the recent case of *Collings v Home Office* highlights. Here, the defendant, the Home Office, and the claimant, the dog handler, were both held to be keepers of an injured German Shepherd dog, and that the Home Office, by way of its officers, knew generally that a dog in pain was likely to bite. Therefore, the knowledge required by s 2(2)(c) was established and the Home Office was liable for the damage inflicted upon the dog handler by the dog assigned to him by the Home Office.

---


199 This is also discussed in “When Wild Horses Couldn’t Drag You Into Court”, (2002) *Legal Executive*, February, p 39.

200 *Mirvahedy v Henley*, op cit, para 119.

201 Ibid, para 120.

202 Ibid, para 121.


204 2006 WL 3064171 (CC), [2006] 12 CL 22
Accordingly, in the light of the generally welcome decision in *Mirvahedy*, where general knowledge is deemed sufficient, this section seems unlikely to raise too many questions.

So far the statutory codification of wild/tame animals and *scienter* have, *inter alia*, been considered. For the former, s 2 replaces the wild/tame classification with a "dangerous" criterion, based on domestication. However, this definition exposed a number of issues that appear to be characteristic of this century, including genetically-modified, cloned and hybrid animals. However, hybrid animals were recognised by common law long before legislation was enacted, so it is unclear why statute has failed to take account of these particular anomalies.

Domestication itself is still not clarified, and questions arise over what constitutes "commonly domesticated" and over when non-indigenous, potentially dangerous, animals may become domesticated. However, even with some indigenous domesticated animals, such as bulls, the law seems woefully inadequate in offering protection to the public, even when it is generally accepted that such animals are notoriously aggressive.

The issue of dogs arises again in this part, where legislation appears to mirror the common law perception. The common law suggests that, in certain circumstances, a domestic dog may be construed as *ferae naturae*; legislation suggests some contemporary breeds of domestic dog may yet be caught by s 6(2), and thereby be held as dangerous, and subject to strict liability. It appears ironic that man's best friend may attract strict liability in the same manner as a tiger, but this is perhaps a product of modern times, when there is mounting pressure to protect the public from the perceived dangers of new and fashionable breeds.

The codification of *scienter* is certainly a complex provision and more easily analysed in its component parts. S 2(2)(a) requires satisfaction of either of its two limbs with regard to the damage caused. The courts favour the simplistic approach so that liability appears relatively easy to establish. This is not without criticism as it fails to take into account all the circumstances surrounding the cause of the damage, but it may be another reflection of the public pressure, seemingly, to protect at all costs.

*Mirvahedy*, now the leading case on s 2, expressed concern on this issue. However, that concern was expressed by the dissenting judge. This somehow lessens its impact. Thus, it seems unlikely the
courts will adopt the more complex approach as it may not benefit the public.

The evolution of paragraph (a) is reflected in Cummings, Curtis and Smith, and highlights how all circumstances involving dogs (even usually docile dogs) causing damage, will invariably elicit or bring out a strong response from the courts, whereby they will strive to impose strict liability. This again provides evidence of the influence of public pressure to protect humans from animals, even if they behave entirely normally for their species.

Section 2(2)(b) has attracted much judicial criticism, where questions arose over what may constitute abnormal characteristics and in what circumstances. The matter was apparently settled in Mirvahedy, where their Lordships favoured the Cummings approach, whereby normal behaviour in abnormal circumstances invokes strict liability.

This appears harsh as owners cannot prevent all abnormal circumstances such as a result of malicious intent, which may invoke normal behaviour. However, conversely, it seems inequitable for an innocent passer-by to suffer injury as a result of someone else’s animal, without some form of recompense. Thus, it appears reasonable for an individual to accept the associated risks of owning such an animal.

Nonetheless, Clark v Bowlt and Fry v Morgan suggest that, where minor injuries are sustained, then the courts will not be so willing to apply strict liability. This in turn suggests that Mirvahedy’s strict approach may only be applicable in more serious cases. The author proposes that this is perhaps a pragmatic approach since the courts are able to interpret the legislation as is appropriate in the circumstances, rather than applying principles that may be unsuitable in particular events.

Section 2(2)(c) is the most straightforward of the subsections, where the owner’s knowledge must be actual, not constructive. This then appears fairly clear although Curtis highlights a possible anomaly: an owner may acquire this knowledge merely by acting cautiously whereas, if they had not acted with such caution, they may attract negligence. So, acquiring actual knowledge may be a double-edged sword.

There is also evidence that it perpetuates owner ignorance, whereby inexperienced owners may deny knowledge of normal animal behaviour, thereby escaping liability whereas experienced
owners, who take reasonable care with their animals, will be held strictly liable. This calls into question the equitability of the legislation.

The Act, therefore, has been subjected to a number of interpretations and in many ways appears to codify, rather than clarify, the common law. However, with the advent of Mirvahedy, a number of areas have now been clarified. Although subject to some criticism still, the decision, it is respectfully submitted, must be welcomed, not least because it provides legal certainty and, as such, may then question the accuracy of the original proposition.

So, what of the future for civil liability for animals? It is to this issue that the paper now turns in the final part.

III. The Future: Status Quo or Reform?

It is evident that the wording of the Act is unclear and, so, has not been wholly successful in clarifying or simplifying the law. Certainly, Mirvahedy has provided authority in one aspect of the legislation, but even that was subject to criticism, the suggestion being that the decision had more to do with policy than clarification. If, then, legislation has failed to expound the law, perhaps it is time to consider alternative approaches.

Negligence

Before the Act's enactment the common law was reviewed and the Goddard Committee 1953 recommended abolishing strict liability and, instead, proposed that liability for damage should be based solely on negligence. The principles of negligence offer flexibility and greater certainty (than the statute) as they permit the courts to determine liability on the basis of "the existence, or non-existence, of the necessary pre-conditions for the imposition of a duty of care and the variable nature of the standard of care." If, then, legislation has failed to expound the law, perhaps it is time to consider alternative approaches.

Thus, in negligence, a lion's keeper would be expected to

---

205 Sharp, op cit, p 178.


display high levels of care to ensure public safety, but a rabbit’s keeper would be required to display lower levels of care. This seems a practical method of determining liability and, especially, an appropriate one in the light of the varying nature of animals.\textsuperscript{208}

Indeed, the negligence approach has been adopted in some countries, including New Zealand and Italy, but it is noted that those countries that impose negligence principles are countries with substantial farming communities and wide open spaces, whereas England is densely populated and largely urbanised,\textsuperscript{209} suggesting that civil law is partly conditioned by socio-economic factors, such as population density and traffic risks. This supports the perception that \textit{Mirvahedy} may have been influenced by public pressure. Perhaps, then, this was one of the reasons why the Law Commission 1967 and Parliament subsequently rejected the law of negligence in favour of strict liability.

It is also suggested that, if negligence were applied in all cases, it would require its principles to be expanded and difficulties may arise when attributing to the reasonable man the correct degree of foresight, where a previously docile animal has caused damage.\textsuperscript{210} This then risks the standard of care being raised to such high levels that imposing liability becomes fraught with difficulties.\textsuperscript{211}

Thus, adopting the negligence approach may offer no more clarity than current legislation and, indeed, it is important to note that negligence has always been, and remains, an alternative and parallel course of action. So, negligence and statute are not, by any means, mutually exclusive.

\textbf{Reform}

Perhaps, instead of forcing negligence to expand, strict liability should be simplified and Section 2 redrafted so that the

\textsuperscript{208} \textit{Ibid, p 23.}

\textsuperscript{209} Sharp, \textit{op cit, p 179.}

\textsuperscript{210} G Wignall, “Handling Nuisance Claims: Damage Caused by Animals”, (1998) 142(33) \textit{Solicitors Journal, 21 August, p 794.}

focus is shifted away from dangerous characteristics and particular times and characteristics, and emphasis is given instead to potential harmful consequences. This is illustrated by Fitzgerald, where the filly injured the claimant and it was held that strict liability could not be imposed as the filly was merely exhibiting natural behaviour, as confirmed in Fry. This ignores the reality that the filly was being grazed on a public footpath and posed a real threat to the public as its previous behaviour gave rise to concern as to whether it should be grazed there.

If, then, legislation were focussed on potential harmful consequences, it could take into account specific characteristics of individual animals as well as their environment, such as whether it is urban or rural, thereby providing a more realistic perspective as to the real risk to the public.

However, cases such as Clark v Bowlt and Fry v Morgan imply that, in circumstances where injuries are not deemed severe, it would be inappropriate to apply the strict interpretation of Mirvahedy. This implies that the courts are willing to interpret the legislation where it is appropriate to do so. Surely it must be accepted that, where animals are concerned, risks to humans cannot be ruled out, and society must accept that there will always be an element of risk involved with either handling animals, or being near them, such as walking through a field containing livestock? Where that risk becomes a real danger and the outcome is serious, the courts have been able to interpret the legislation in a manner that appears to reflect the seriousness of the incident.

If the Animals Act can be interpreted in such a pragmatic fashion, then reform may not be warranted.
Conclusions

The common law exposed issues associated with wild and tame animals, and with establishing the required knowledge to invoke strict liability as well as provoking criticism associated with the common law’s suitability at present.

In light of the problems associated with the common law, statutory reform should have offered welcome clarification and authority. However, legislation retained many of the old common law provisions, including establishing owner knowledge. So, perhaps this was an omen of the future issues to come.

Ferae naturae and mansuetae naturae classifications were replaced with a “dangerous” criterion, based on domestication, but statute failed to clarify “domesticated”, raising issues as to what constitutes commonly domesticated and how new species, hybrid and cloned animals, may be classified.

Establishing liability for damage or injury done by domestic animals raised yet further issues, including evaluating the risk of damage and how owner ignorance may provide a defence, as highlighted in the analysis of s 2 of the Act. Also, case law since 1971 reflects the uncertainties associated with trying to establish such liability.

The decision in Mirvahedy is, thus, both a blessing and a curse: it has provided authority and clarity, which was long overdue, but it is also subject to much criticism; the decision there may be more a reflection of the “compensation culture”, now prevalent in the 21st century, than the desire to see justice being done. However, subsequent cases have perhaps lessened such fears and it appears that the courts are able to assess the realities of the situation before applying such rigid principles.

Nevertheless, it is submitted that it is difficult to see how a decision either way in Mirvahedy would have been without criticism: either the responsible animal owners would have been liable or the innocent injured party would have been without a remedy.

So, even with the authority of Mirvahedy and subsequent cases, the Act still retains unresolved issues. Perhaps, therefore, it is time to reconsider legislative reform. It seems unlikely, however, that reform will be a consideration because, notwithstanding subsequent criticisms, Mirvahedy has provided authority where
previously there was ambiguity. Thus, it is hoped that this case will provide a sufficient degree of certainty for the future.

Nevertheless, it may be that as genetics, breeding and fashion evolve still further, Parliament may recognise that current legislation is not well adapted to deal with such contemporary phenomenon, and may, in the end, be forced to review and amend the law.

It is respectfully submitted that, in the light of the overall evidence provided throughout this paper, in spite of Mirvahedy, civil liability for animals still retains unresolved issues, and only time will tell whether Mirvahedy really has provided a stabilising influence or whether Parliament will be forced to amend its legislation.

Juliet Chevalier-Watts
Southampton Solent University