benchtv
a benchmark production

Précis Paper

Liability for Escaped Animals

This presentation is an interesting discussion about tortious liability for injuries caused by escaped animals.

Discussion Includes

- Background facts
- The case in negligence
- Common law immunity
- The case for breach of a statutory duty
- Considerations when keeping animals on a property
- Community expectations

Précis Paper

Liability for Escaped Animals

1. In this edition of BenchTV, Brett Heath (Special Counsel, Carter Newell Lawyers, Brisbane) and Ian Benson (Solicitor, AR Conolly and Company) discuss the recent decision of the Queensland Supreme Court in *Hutton v RLX Operating Company Pty Ltd & Ors* [2016] QSC 248, which considered the obligation of a landowner to fence its land to prevent the escape of animals.

Background and Material Facts

2. Mr Hutton, the plaintiff, suffered serious physical injuries when he drove into and struck a small group of horses that had escaped from the Gracemere Saleyards Complex onto the Capricorn Highway. The horses belonged to the third defendant and she had brought them to the saleyards a few days before for the purposes of a camp drafting and quarter horse event organised by the second defendant. The first defendant (RLX Operating Company Pty Ltd) was the sublessee of the saleyards at the relevant time.

3. Mr Hutton brought an action for personal injury. The case was based upon negligence and the breach of a statutory duty. The first defendant, the lessee of the land, applied to have the proceedings struck out.

The Common Law Immunity

4. The first defendant sought to rely upon a common law immunity established in the case of *Searle v Wallbank* (1947) AC 341. *Searle v Wallbank* stands for the proposition that a landowner has no obligation to fence their land unless the animals on the land are known to be dangerous.

5. The plaintiffs, in response, argued that there was an exception to the immunity established in the case of *Graham v The Royal National Agricultural and Industrial Association of Queensland* [1989] 1 Qd R 624. In that case, the Court had found that the Royal National Agricultural and Industrial Association was liable for the escape of a bull from the showrooms. Conolly J held that the immunity was not applicable to the RNA because, although the bull was not known to be dangerous, the RNA should have known that a confined bull could become active and burst out. Therefore, if an animal could behave aggressively if confined for a long period of time, then was is an obligation to keep it contained. Conolly J stated that the bull had "a natural tendency, in these circumstances, to over-activity and to be unsettled in unfamiliar surroundings" a tendency "obviously shared with all, or at least most of the large animals on the site".

6. In determining the strike out application, McMeekin J referred to the case of *State Government Insurance Commission v Trigwell* [1979] HCA 40; 142 CLR 617, and held that the immunity is only applicable in circumstances where the animal is not otherwise known to be dangerous. The principle could not be extended to animals that were otherwise docile, but that might act out if confined.

7. The trial judge found that the case in negligence was arguable, but that the plaintiffs had to replead the case to establish that the first defendant knew, or should have known, that the horses might break out. As they were ultimately unable to do this, as there was no evidence of material facts that the first defendant should have known, the case against the first defendant failed.

The Breach of a Statutory Duty

8. The plaintiff also argued that as the defendants had an obligation under local laws to fence the animals and prevent them from straying onto the highway, there was a cause of action founded upon a breach of a statutory duty. McMeekin J held that the question as to whether there was an enforceable private right based upon statutory duty is a vexed question, but the test was whether the statute protects a recognised common law right. If it does, it can found a cause of action.

9. McMeekin J was not satisfied that the relevant bylaws were protecting a recognised common law right, as the common law right in this case was in fact the immunity to having to fence the land. Furthermore, it was unlikely that the Rockhampton Regional Council had overturned *Searle v Wallbank* by enacting certain bylaws. The statutory claim was therefore struck out.

Considerations When Keeping Animals on a Property

10. For landowners keeping animals on their property, Mr Heath reminded viewers that if the animal is known to be dangerous, the immunity in *Searle v Wallbank* will not apply and there will be an argument that the landowner should confine the animal properly. However, if the animal is not known to be dangerous, there is no obligation to fence.

11. Moreover, *Graham* remains the law, and so where any livestock is confined in an unusual environment, such that an ordinarily docile animal may become docile and escape, liability may be imposed where the animal is not sufficiently restrained.

12. The common law position may not reflect current community standards. In this case, the Council, in imposing obligations on people to confine animals in public places, believed it was acting in the public interest and reflecting community expectations. However, although a bylaw of this nature may expose the offender to a fine, this case demonstrates that it may not be sufficient to give rise to a cause of action under the common law.

BIOGRAPHY

Brett Heath

Special Counsel, Carter Newell Lawyers, Brisbane

Brett Heath is a Special Counsel within the Professional Liability Insurance team at Carter Newell Lawyers. Brett recently graduated from the Bar Practice Course administered by the Queensland University of Technology in conjunction with the Bar Association of Queensland, and is now qualified to be admitted as a barrister. Brett is a regular contributor to industry journals and a member of the Australian Professional Indemnity Group (Queensland Chapter) where he has facilitated and presented at monthly meetings.

Ian Benson

Solicitor, AR Conolly and Company

Ian Benson is a solicitor at AR Conolly and Company and holds a First Class Honours degree in law.

BIBLIOGRAPHY

Focus Case

Hutton v RLX Operating Company Pty Ltd & Ors [2016] QSC 248

Benchmark Link

https://benchmarkinc.com.au/benchmark/composite/benchmark_02-11-2016_insurance_banking_construction_government.pdf

Judgment Link

http://archive.sclqld.org.au/qjudgment/2016/QSC16-248.pdf

Cases

Searle v Wallbank (1947) AC 341
Graham v The Royal National Agricultural and Industrial Association of Queensland [1989] 1 Qd R 624
Commission v Trigwell [1979] HCA 40; 142 CLR 617