

*November 2007*

## **STRAYING ANIMALS**

### **General Rule**

1. The 'keeper' of an animal has a general duty to ensure that the animal does not cause injury or damage. Where the animal is of a dangerous species (i.e. a non-domesticated animal which usually causes damage when fully grown, such as a lion) the keeper will be liable for injury or damage caused unless the injury etc. was the fault of the sufferer (Animals Act 1971, sections 2(1) and 5(1)).
2. In the case of an animal which is not of a dangerous species (i.e. domestic animals, dogs, cats and farm animals) the keeper is only liable for injury or damage if he knew, or ought to have known, that the particular animal was likely to be dangerous (1971 Act, s.2(2)). Again there is no liability for self-induced injury or damage.
3. Damage includes death, personal injury and damage to property (1971 Act, s.11).

### **Straying livestock**

4. Where livestock (i.e. cattle, horses, asses, mules, hinnies, sheep, pig, goats, poultry and deer not in the wild state) strays on to land and cause damage, the owner of the livestock is normally liable to compensate the landowner (1971 Act, s.3).
5. No liability arises if the livestock are lawfully on the highway and stray from the highway on to adjoining land (1971 Act, s.5(5)). Nor is there any liability if the damage etc caused by the straying livestock was the fault of the landowner. It would be a defence to any claim for compensation to prove that the landowner was in breach of duty to fence and thus was responsible for the livestock coming onto his land (1971 Act, s.5). As a general rule, however, a landowner is under no legal

obligation to fence his land but it is clearly prudent to do so, especially in respect of land which abuts a highway.

6. A landowner may detain trespassing livestock (but not other animals) provided that he gives notice to the police and to the owner (if known) within 48 hours. The landowner may sell the livestock if the owner does not pay for any damage and for the expense of keeping the livestock within 14 days (1971 Act, s.7).

### **Animals straying onto the highway**

7. The keeper of an animal must take reasonable care to see that damage is not caused by animals straying onto a highway (1971 Act, s.8(1)). A highway includes a footpath, bridleway and any other public right of way, as well as a road.
8. If he fails to take reasonable care, the keeper of the animal is liable for any damage caused by it straying on to the highway – another good reason for adequate fencing.

### **Common land and unfenced land**

9. There is a very important exception to the general rule laid down in s.8(1) of the 1971 Act. Where damage is caused by animals straying from unfenced land onto a highway, the person who placed them on the land is not in breach of the duty to take reasonable care merely by placing them there if:
  - a) the land in question is common land, or is land in an area where fencing is not customary, or is a town or village green; and
  - b) he had a right to place the animals on the land (1971 Act, s.8(2)).
10. In the case of *Davies v Davies* [1974] 3 WLR 607 (Court of Appeal) the court held that not only was a commoner protected by s.8(2), but also a person licensed by the commoner so long as the rightful number of animals was not exceeded (i.e. the number of animals shown on the register of rights of common). The same principle would apply where any other person or his licensee lawfully had animals on land adjoining a highway.

**Criminal liability**

11. S.155(1) of the Highways Act 1980 provides that if any horses, cattle, sheep, goats or swine are at any time found straying or lying on or at the side of a highway their keeper is guilty of an offence, but no offence is committed where the highway passes over any common, waste or unenclosed ground. An offence under the section is committed if the animal strays from common etc. land on to a road but moves along the road away from the common – *Rees v Morgan* (Solicitors’ Journal 27, February 1976).
  
12. S.155 does not affect any right of pasture on the side of a highway.

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
17	Control of Dogs	Sets out legal provisions in respect of stray dogs
68	Negligence	Sets out the Common Law of Negligence which is relevant to this topic.

© NALC 2007