

On the right side of the law

Discover how to avoid common legal pitfalls with advice from **Jacqui Fulton**

MEET THE EXPERT



JACQUI FULTON is a solicitor advocate and founder of Equine Law, www.equinelawuk.co.uk

A NUMBER OF EQUINE legal issues involving road traffic accidents, dog attacks, abandonment and welfare have hit the headlines over the past few years, and there are several common legal points all horse owners should be aware of. Here to explain what these are – and how they might affect you – is expert Jacqui Fulton.

1 Planning permission

One controversial issue that's affecting more and more riders involves the use of mirrors and floodlights in an outdoor arena.

"What you may feel is not obtrusive to your neighbours could still pose a problem if you don't have planning permission," explains Jacqui Fulton. "For example, only if the arena mirrors are moveable do you not require planning, which is why many horse owners are being caught out."

The same is true of field shelters. Many horse owners skip the planning process, as well as the cost of permanent stabling, by opting to build one or more field shelters. But what many don't realise is that if the shelter isn't mobile and moved on a regular basis it actually requires full planning approval from the local council.

Floodlights are often classed as a permanent structure



Are your arena mirrors moveable? If not, contact your local council for planning permission

2 Buying a horse

When you trawl the horses for sale adverts on horsedeals.co.uk, the phrase 'let the buyer beware' should always be at the forefront of your mind. "Sale and purchase disputes are the most common equine legal issue," says Jacqui, so don't be won over by a stunning picture or amazingly low price, and endeavour to let your head rule your heart. If something seems too good to be true, it probably is.

"When it comes to private sales, it's the buyer's responsibility to ask all the right questions about the horse," says Jacqui.

"Only when a question is answered by the seller to dupe the buyer into the sale does the buyer have a right of recourse under the Misrepresentation Act." This could be over-exaggerating the horse's ability or lying about his age so the buyer is drawn to buy the horse under false pretences.

The right to return

Many inexperienced buyers end up in trouble, buying a horse only to discover that not have they potentially lost money, but their 100% bombproof schoolmaster is in fact a four-legged Jekyll and Hyde, and they have the issue of re-selling or retraining him.

However, if the horse was bought from a dealer in the course of business, and a behavioural problem becomes an issue, there is an opportunity to return the horse.

"Last October, a new rule enabling the 'short-term right to reject' was enforced under section 22 of the Consumer Rights Act 2015," says Jacqui. This is similar to the return of goods in a shop; the only difference is that the buyer must be able to show that there was a fault at the time the horse was collected.

"The consumer has 30 days in which to report the fault with the goods, ie the horse, where they'll be entitled to a full refund on return of the horse."

3 Pre-purchase veterinary examination

When buying a horse, it's advisable to have him vetted and, in the vast majority of cases, a full five-stage vetting will be necessary if you intend to insure your new horse. But what happens when the clean-limbed, fully vetted horse turns out to have half the ailments in an equine vet manual?

"There are more cases of veterinary negligence nowadays, where the buyer later argues that the vet has been negligent for not advising them of certain clinical risks," says Jacqui. "However, these cases are complex as it's necessary to prove that the problem existed at the time of the pre-purchase

examination and that the vet negligently overlooked or failed to advise the purchaser."

As a vet's career could be affected by a legal case such as this, a second opinion from another vet may be required. This could suggest why there is a tougher process and lower pass rate in five-stage vettings.



A five-stage vetting is an important part of the buying process

6 Loaning a horse

To avoid future confusion and upset, it's always best to put any loan agreement in writing, listing all the terms and conditions. This acts as proof if conflict arises at a later day, regardless of who's involved in the contract.

"Most loan disputes occur between friends, so it's irrelevant whether or not you are known to, or are friends with, the loanee," says Jacqui.

We've all read about the rise in the number of horses being abandoned, whether due to financial reasons, overbreeding or purely a lack of interest. So what happens if your loan contract ends and the loaner disappears, effectively abandoning the horse to you?

"It's important if you end up in this situation that you try to make your best effort to contact them," says Jacqui. "This could be by emailing, writing to the last known address or instructing an enquiry agent to try and find the new contact address for the owner of the horse."

As we all know, the cost of keeping a horse can soon mount. "If you are no longer able to care for the horse, and his owner doesn't want him back or disappears, you can take possession of him under the Control of Horses Act 2015, which then allows you to sell him on."

For more information on equine legal matters visit www.equinelawuk.co.uk

Key points for a loan agreement

- Name and address of the loaner and loanee
- Full details of the horse
- Who will insure the horse and what for?
- Who will pay for the horse and his expenses?
- Is there a lease fee and how much is it?
- Where will the horse be kept and can he be moved?
- Does the horse have to be seen by a particular vet or farrier?
- How long is the agreement for and is there a break clause?
- Does the loanee have a first right of refusal if the loaner decides to sell the horse?
- If so, is there a fixed sale price?
- For a sample agreement, see www.bhs.org.uk



Chat through the points of your loan agreement, in person or on the phone, before it's drawn up

4 Equine debt

So what happens if you kindly take in a horse for someone and offer livery, only to find you've ended up six months out of pocket with feed and bedding bills as they've not paid their livery fees?

"This is a tricky legal circumstance, but the first question to answer is whether there was a contract in place with a clause providing the yard owner with a right to hold a lieu over the horse in the event of outstanding debt," says Jacqui.

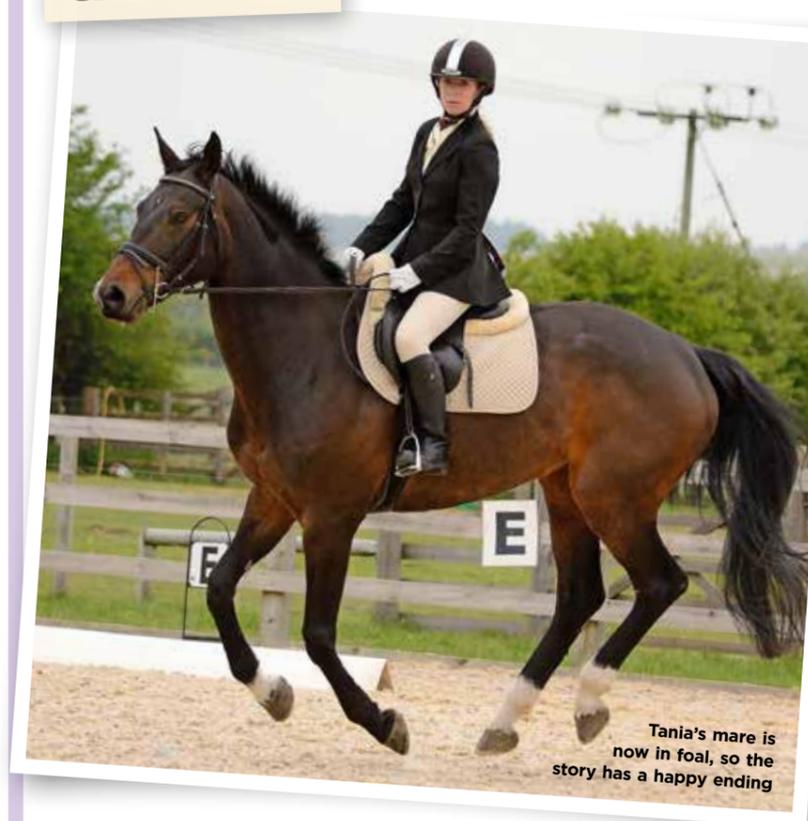
"If everything's put down in writing, this could entitle the yard owner to sell the horse if the livery fees remain unpaid for a specific period. Any surplus amount after the sale should be passed to the owner."

5 Euthanasia

It's not a nice thought, but where does everyone stand legally if an owner is uncontactable and their horse is at a yard in distress or seriously ill and needs to be euthanised? "This is where a livery contract becomes invaluable, as it would allow a yard owner to have a horse euthanised on the vet's advice in the event of an emergency," says Jacqui. "Get everything in writing. Without a contract, the common law duty of care would still apply, which means the person caring for the horse, ie the livery owner, would have a duty of care towards the horse, as his interests and welfare are the priority."

"Without a contract, the livery owner has a duty of care"

CASE STUDY



Tania's mare is now in foal, so the story has a happy ending

"I hope this landmark case raises awareness"

ON 15 APRIL, 2016, Tania* from Cambridgeshire won a landmark court case after unwittingly buying equine semen that was poor quality. "I spent over a year researching the right Connemara stallion that I could put my KWPN mare in foal to," says Tania. "I finally spoke to the stud owner at great length and felt I had asked all the right questions." An agreement was made and the £550 fee paid, so Tania assumed the process would be straightforward.

"In July 2015 my mare's follicles were ready," says Tania. "The stud collected the semen, assessed and graded it. Then the chilled semen was posted to my vet." Alarm bells started to ring as the container arrived with two unlabelled test tubes and no paperwork or grading. "My vet, who's an artificial insemination specialist, tested the semen under a heated microscope and found it only had 30% motility, with poor forward progression of spermatozoa," says Tania.

Immediately, Tania's vet contacted the stud owner to inform her of the quality, but she wouldn't send any more samples without payment, so the vet decided to try insemination. Unsurprisingly, she didn't conceive.

Unsuccessful in trying to claim back her fee, Tania opted for the legal route. "If I was sent a healthy sample that didn't work, I wouldn't have gone to court," says Tania. "It's the fact the semen was unusable from the start."

In April this year, the case went to court where the judge, following the Sales of Good Act 1979, classed the semen as a 'good' as it's biological matter. He deemed it not fit for purpose and that the product didn't match the description of what the seller had described it as.

"The judge noted that it was misrepresentation, but felt the Sales of Goods Act 1979 covered the issue," says Tania. "All I wanted to do was raise awareness to other owners and breeders about the purchase of quality equine semen and the rights owners have if the product is not suitable."

Following the verdict, the stud owner was found guilty of supplying unusable semen and asked to pay Tania a settlement to cover the claim, witness fees and court fees.

After this ordeal, the positive news is that Tania's mare is now in foal to another stallion, and the new arrival's due at the end of June. 🐾

* SURNAME WITHHELD FOR LEGAL REASONS