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# ALLEVIATING LURKING LEASING LIABILITY: CARE REQUIRED BY EQUINE LESSEES

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In the world of horseback riding, lease agreements are almost as numerous as monogrammed saddle pads. Equine leases allow aspiring equestrians to test the waters of horse ownership, offering a lessee all the benefits of horse ownership, while requiring significantly less commitment (at least in the long term). However, as easily as one can realize the benefits of this arrangement, one can just as easily see the potential complications—namely, the complex question of who will bear the burden of liability if the horse is somehow damaged or injured.

Lease contracts typically require that a lessee provide, at his or her own expense, care that is in accordance with “usual and customary practices.”<sup>[i]</sup>  
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn1)  
Lessees are also required to maintain the horse in good health, including but not limited to providing: a safe, clean environment, regular and adequate food and water, all veterinary care, hoof care, grooming and exercise.<sup>[ii]</sup>  
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn2)  
Lessees usually must also provide for any and all necessary and prudent veterinary and farrier needs.  
[iii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn3) Some contracts also may go so far as to say that the lessee incurs full liability for any expenses resulting from the lessee’s “negligence.”<sup>[iv]</sup>  
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn4)

If the lessee defaults on the lease by failing to provide the correct level of care, the lessor may terminate the lessee’s right to possession and may take the horse back immediately.<sup>[v]</sup>  
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn5)  
The lessor also may be entitled to recover damages resulting from lessee’s default.<sup>[vi]</sup>  
(file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn6)

Practically speaking, what do these “usual and customary practices” leading to the horse’s “good health” entail? What constitutes negligence on the part of the lessee? Is it possible to take advantage of all the wonderful benefits of leasing, without incurring seriously steep liability? And how can attorneys advise clients involved in lease contracts to care for the leased animal in a way that gives them the best chance of avoiding default and incurring damages?

Typically, a court will only look at the terms of the contract governing the relationship between parties.<sup>[vii]</sup> (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn7) However, evidence about the meaning of specific terms can be introduced if it is relevant to prove the meaning of the contract language.<sup>[viii]</sup> (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn8) Thus, questions about the necessary level of care required to be given to the horse by the lessee, and whether or not such care meets the standard of “usual and customary practices” and “good health,” or falls to the level of “negligence,” may be introduced. Courts have found that such evidence regarding standard of care given by lessee must be presented according to a principal in the same or similar circumstances as the lessee.<sup>[ix]</sup> (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_edn9)



Practically speaking, this means that disputes over whether or not a lessee's care of a leased horse meet the standard required by the lease contract will likely be resolved based on how a similarly situated lessee would have behaved. It is important to note that this could be dramatically different based on the purpose of the lease, the horse in question, and the geographic location of the transaction. For example, a former Olympic-caliber horse leased by a young rider to compete in the North American Junior and Young Rider Championships would likely demand an extremely high level of care, both due to the value of an Olympic-caliber horse and the high level of care to which it would be accustomed, and the extra care required to minimize the effects of both the high demand pre-competition training and the competition itself. If such lease took place in Virginia or Kentucky, where horse care is heightened due to the sophistication of care used by professionals in the area that often influences the care by surrounding amateurs, “usual and customary practices” might be unusually thorough. Conversely, a horse leased for pleasure riding and kept on the family farm would likely require significantly less care due to decreased physical demand on the horse, especially if the transaction took place in a less horse-savvy area.

Thus it is most important for those entering into and operating under a lease contract to maintain a standard of conduct similar to other lessees who are similarly situated. Practically speaking, this means that a lessee should observe the conduct of both other lessees and equine professionals in their area, as these may be exactly the kind of people that would be asked to provide witness testimony in a dispute over a leased horse's care. For example, if lessees in the area give their older horse in both regular work and regular competition a full rub down after every jump school, this may very well be the standard of care for similarly situated lessees. If a similarly situated lessee in the same area with an older horse in both regular work and competition does not rub his horse down after a jump school, and some sort of injury results, the lessee may be liable for his less than “usually and customary practices.”

Potential liability for a lessee of a horse can be intimidating; however, if one can safeguard themselves by observing the standard of care practiced by competent, similarly situated lessees and horse people around them, the benefits to be gained by leasing can be fruitful.

[i] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref1) *Equine Lease Agreement*, tidyforms.com, <http://www.tidyforms.com/download/horse-lease-agreement-1/page-1.html> (last visited Sept. 17, 2016).

[ii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref2) *Full Time Horse Lease Agreement*, Equine.com, <http://equine2.com/static/FullTimeLeaseAgreement.pdf> (last visited Sept. 17, 2016).

[iii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref3) *Equine Lease Agreement*, supra note i.

[iv] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref4) Horse lease contract used by author Hannah Bennett (November 1, 2013) (on file with author) (“HOWEVER, should the Horse be injured due to the express action or negligence of the Lessee, the Lessee will pay full veterinary expenses including associated rehabilitation costs associated with said injury.”).

[v] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref5) *Full Time Horse Lease Agreement*, supra note ii, at 4.

[vi] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref6) *Id.*

[vii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref7) *Thompson v. Libby*, 26 N.W. 1 (1885).

[viii] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref8) *Trident Ctr. v. Conn. Gen. Life Ins. Co.*, 847 F.2d 564 (9th Cir. 1988); *Pac. Gas & E. Co. v. G. W. Thomas Drayage & Rigging Co.*, 442 P.2d 641 (Cal. 1968).

[ix] (file:///C:/Users/Evan/Documents/KJournal/2016%20blogs/Blogs/Bennett%20Blog-2.docx#\_ednref9) *Leier v. Purnell*, No. 2-04-039-CV, 2004 WL 2830645 (Tex. App. Dec. 9, 2004).

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