Equine Activity Liability Acts - Region 11
California, Hawaii, Nevada
Elk Grove CA June 3-5, 2016

As of 2016, California does not have an EALA (New York and Maryland)

Disclaimer -- This presentation and supporting material is not intended to take the place of legal advice on a specific matter nor to establish the attorney-client relationship. It is designed for informational and educational purposes. Participants are encouraged to seek legal counsel from an attorney properly licensed in his or her state and who regularly practices equine law in his or her state. Please be mindful that if you establish an attorney-client relationship, for legal advice and valid representation, all pertinent facts must be disclosed to your attorney.

I. Introduction to the Equine Activity Liability Acts (EALA)

In the mid-1980's several groups, led primarily by the American Horse Council, began promoting the passage of a liability act to protect owners and participants in equestrian activities. The underlying intention of Equine Activity Liability Act is to encourage equine activities by limiting civil liability of those individuals who offer, organize, or sponsor equine activities. Equine activities provide a variety of benefits to the states in which they occur including a significant economic impact. Studies sponsored by the American Horse Council (see website) reported that in 2005, the horse industry contributed approximately $39 billion in direct economic impact to the U.S. economy, including 1.4 million full time jobs and total spending reached $102 billion. Among other things, EALAs are designed to support the horse community by limiting liability from the inherent risks associated with horse activities, but do not offer complete immunity. Mishaps involving non-inherent risks fall outside the scope of the law – things like faulty tack or equipment, failing to properly match mount and rider, negligence in any way – supervision, instruction, duty of care owed., etc.

Initially a uniform act was circulated in the 1980's. Over the next three decades an act was introduced and passed in some form by 47 states. The most recent was passed by Nevada in 2015, effective October 2015. Although the EALA was originally designed to be a uniform law, individual states adjusted and reworked the version that passed their individual state legislature. What passed in individual states was changed and modified before final passage to the extent that it no longer resembles a uniform law and one cannot rely on the version passed in one state to apply in another. Laws differ and must be carefully considered in each state to determine what application and immunity is available in that state. Liability assessment varies state by state and is primarily dependent on the specific language of the unique statute in each state. Before considering what protection is offered by an EALA in any particular state, one must closely read the version that passed in that state, and when possible, read cases to see how the courts in that state have interpreted and applied that law to the unique facts presented in each case.

➔ **CAVEAT ---- STATE LAW CONTROLS.**

Currently, several online equine resources provide descriptions and links to the various state statutes throughout the country, as well as some discussions regarding possible legal interpretations. For further reading on this subject please refer to the websites of *The American Horse Council, The American Equestrian Alliance, Equine Legal Solutions,* and numerous insurance websites that offer coverage for equine activities. Additional internet information is available by doing a search on "Equine Activity Liability Act (or Law)". Many resources exist, including magazine articles, blogs, law review articles, etc. The reader is cautioned to consider the source of the information before relying on it. Additionally, one must consider the jurisdiction and any changes that may have been made to the law since its enactment.

II. Your Individual State law and Components of EALAs.

All but 3 states (CA, MD, NY) have enacted some form of an EALA. Copies of the states' laws in this region are at the end of this outline. Because the state legislatures can change the law and regularly do so, it is important to make certain that the state law you are relying on is current. To find the current law in your state you may request it from an attorney in your state or obtain it from a subscriber service like West Law, Lexis Nexis, etc. (fees may apply). Alternatively, you may find your state law on the Internet in a several locations: 1) The website for most state legislatures contains a link to the state code; 2) Internet search of "Equine Activity Liability Act"; 3) Website for your county extension office, state horse council, or the American Horse Council; or 4) the lists on the websites of The American Equestrian Alliance and animallaw.info.

Once you obtain a copy of the EALA in your state and verify that it is the current law, break down the specific parts of your law to determine primary points. This is similar to reading the outline you prepared for your high school theme papers. Hierarchy -- Learn how your law is structured and identify the parts. Generally, EALAs contain about 4 components in some order:

1. Definitions – CRITICAL that you understand these in your state. What qualifies as an equine activity, equine professional, equine sponsor, participant, equine (or animal!), inherent risks, etc. is a threshold matter that controls whether the EALA applies.
2. Statement of limited immunity granted by the law.
3. Exceptions.
4. Requirements to invoke the limited immunity this could be signage, notices on contracts, wordings on releases, etc. Failure to comply with requirements and the law may not protect you!

III. Case Law

When a case is determined by a court, it becomes legal precedent and is binding on very specific facts and law. A case determined in one state may NOT be binding legal precedent in another state for many reasons. First, the <u>laws</u> in the two states must be identical. Any variation in the law from one state to another state can result in a completely different outcome. Similarly, the <u>facts</u> must be nearly identical. Even a slight

variation in the facts can result in a totally different determination by the court. These two things, the law and the specific facts of the case, are threshold matters. It is critical that you carefully select an attorney who is well-versed in the equine laws of your state and once you chose your legal counsel, you must be very open and totally candid concerning the exact details (facts) of your situation. A case in a lower court (trial) must be appealed to an upper level court to have a published opinion that can be cited as case law. Some cases are reported without an opinion and are of no legal consequence elsewhere.

Helpful terms in reading legal cases: At the trial (lower) court level, the *Plaintiff* is the one who brings the action and the *Defendant* is the one who is being sued. If the case goes to a higher court, new names for the parties: the *Appellant* is the one (may be the plaintiff or defendant) who is unhappy with what the trial court decided and takes the case (appeals) to a higher court for consideration hoping for a change in the result. The *Appellee* is in the position on appeal of defending the ruling of the lower court.

IV. **Some Interesting Cases**

Fun to read and can offer you some guidance but be very careful relying on the result if your law and facts differ in any way! There are several cases you can find with an online search. Enjoy the read!

Amburgey v. Sauder, 605 N.W. 2d 84, Michigan, (1999)

The plaintiff, Amburgey, claimed damages for injuries to her arm and shoulder as a result of being bitten by a horse as she was walking in the hallway of defendant Sauder's boarding stable. The court determined that the intent of the Michigan EALA was to grant immunity to qualifying defendants for certain acts or omissions. It was determined that by the express definition contained in the EALA, Amburgey was a "participant" who was "engaged in an equine activity" while touring the barn (Michigan statute included "visiting, touring, or utilizing an equine facility" within the definition of equine activity) and therefore, Amburgey fell within the class of persons who were barred from recovering from a qualified defendant. The Michigan statute, required posting of specific notices and evidence was presented that more than one appropriate sign was posted "in a clearly visible location in close proximity to the equine activity." A goat had eaten one of the signs. Other signs posted elsewhere, including at the main entrance, were intact. Because there was appropriate posting of signs, Sauder, who met the statutory definition of "equine professional", could invoke the protections of the EALA and Amburgey was barred from recovery. This case contains an excellent judicial discussion regarding the strict interpretation of the actual words of the Michigan EALA as well as the purposes of the enactment of the EALA. It also, by footnote, cites the "penalty" imposed by the Alabama EALA for failure to post a sign; i.e. the law will not protect!

A similar horse bite case was determined in Connecticut under similar EALA. See **Vendrella v. Astriab**, 87 A. 3d 546, (2014) final decision at 60 Conn. L. Rptr. 592 (July 2015). Vendrella has a long history, was bounced around in the courts on legal and technical issues, not related to the EALA. However, good language and fun reading regarding the propensity of a horse to bite.

Kangas v. Perry, 620 N.W. 2d 429, Wisconsin (2000)

Kangas claimed damages for injuries she sustained when she fell backwards from a horse-drawn sled owned by Perry. Kangas was standing behind the only seat on the sled and during a rest stop, let go of the seat to open a beer. When the horses unexpectedly moved forward, she lost her balance and fell off backwards sustaining serious injuries. Perry trained and competed draft horses and used a sled for some of the training. Kangas was visiting the horse farm with her husband and was invited to ride on the sled. She chose her position on the sled and was caught off-guard while opening a beer. Finding that Perry was an equine activity sponsor within the definition of the Wisconsin EALA, and that Kangas was a participant, the court applied the protections of that law to Perry. The court further found that the propensity of a horse to move without warning is an inherent risk of equine activity as contemplated by the statute.

Gamble v. Peyton, 182 S.W. 3d 1, Texas, (2005)

Plaintiff Peyton claimed damages from falling from a horse she was purchasing from Defendant, Gamble. The trainer rode the horse, then Peyton rode the horse in Gamble's riding pen under Gamble's trainer's supervision. As Peyton was dismounting, the horse tossed her and she seriously injured her back requiring surgery. The trainer had mentioned the fire ants in the pen before Peyton mounted and when he returned the horse to the barn after the accident, he found fire ants on the horse's back legs. Peyton sued and Gamble prevailed under the Texas EALA. The court found that Gamble was a horse professional, and that Peyton was a participant in an equine activity. The court determined that the presence of fire ants in an outdoor riding pen is a natural condition that was known to Peyton and the behavior of the horse was an inherent risk of riding.

Gibson V. Donahue, 772 N.E. 2d 646, Ohio, 2002.

Rider Gibson, on her own horse, suffered personal injuries when she fell from her horse after being chased by free-running dogs on a city-owned field. Gibson sued Donahue, the dog-owner, and the city. Donahue claimed immunity under the EALA – court said EALA cannot be applied to dog owner or city, and simply does not qualify under the terms of the equine law. However, the leash laws might make the dog owner responsible so it was sent back to the trial court to consider that. City, of course, went out on immunity. This case is hilarious reading and worth the view!

Friedli v. Kerr, Tenn. App., not reported in S.W.3d, 2001 WL 177184, Tennessee.(2001)

The Friedli's were touring downtown Nashville in horse-drawn carriage owned by Kerr when a loud noise frightened the horse and the horse bolted. Ultimately, the Friedl's were dumped on the street, the horse broke free, and then went his usual route without the carriage, the driver, or the passengers. The Friedli's sued and Kerr claimed EALA. The trial court originally determined that Kerr owed a heightened duty of care as an "amusement ride operator" or as a "common carrier" rather than as an equine professional under EALA. On appeal, the Ct. of Appeals determined that this was a case of first impression and disagreed with the t/ct. The appeals court held that Kerr owed the Friedli's only an ordinary duty of care. The appeals court expressly reversed the t/ct's

judgment determining that Kerr should NOT be held to the same heightened duty expected of common carriers and operators of amusement rides and remanded for the t/ct to proceed consistent with that holding. Case made no final rulings whether the EALA applied. Costs were taxed to BOTH parties – giving rise to doubt and questions.

Stoffels v. Harmony Hill, 912 A. 2d 184, New Jersey (2006).

Plaintiff Stoffels was injured when she was thrown from a horse owned by Harmony Hills. T/ct initially ruled for defendant giving full coverage to the EALA. NJ Superior court held it was a case of first impression, that EALA clearly applied, however, not absolute immunity. Rider claimed on appeal that the stable owner was negligent in horse assignment for her abilities. Appeals court returned to the t/ct for a determination of whether the stable owner was negligent in matching the horse and rider. No further published opinion.

Snider v. Ft. Madison Rodeo, 2002 WL 570890, Iowa (2002) Unpublished opinion.

Plaintiff Snider crossed the street mid-parade and was injured by a pony in the parade. She sued the parade sponsor, the rodeo company. T/ct ruled against Snider and she appealed. The Court of Appeals in Iowa upheld that summary judgment was proper. (Summary judgment is when there is no material issue of fact and the moving party, here Ft. Madison, is entitled to judgment as a matter of law.) A spectator is specifically listed as a participant involved in a "domestic animal activity" according to the very terms of the Iowa EALA and therefore, the sponsor was not responsible for the injuries.

V. Take Away.

KNOW YOUR LAW! The law in someone else's state has no implication in your state! Discussion focusing on the comparative analysis of the Equine Activity Liability Acts in Region 11—(California,) Hawaii, Nevada.

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HAWAII -- Hawaii Code Annotated HRS Section 663B-1 and Section 663B-2.

Section 663B-1. Definitions

As used in this section, unless the context otherwise requires:

"Engages in an equine activity" means riding, training, assisting in medical treatment or physical therapy of, driving, or being a passenger upon an equine, whether mounted or unmounted, or any person assisting a participant or show management. The term does not include being a spectator at an equine activity, except in cases where a spectator places oneself in an unauthorized area and in immediate proximity to the equine activity.

"Equine" means a horse, pony, mule, donkey, or hinny.

"Equine activity" means:

(1) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games, and hunting;

(2) Equine training or teaching activities, or both;

(3) Boarding equines;

(4) Riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine;

(5) Rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; and

(6) Placing or replacing horseshoes on an equine.

"Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, an equine activity, including, but not limited to pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college- sponsored classes, programs, and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including, but not limited to stables, clubhouses, pony ride strings, fairs, and arenas at which the activity is held.

"Equine professional" means a person engaged for compensation in instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine, or in renting equipment or tack to a participant.

"Inherent risks of equine activities" means those dangers or conditions which are an integral part of equine activities, including, but not limited to:

(1) The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;

(2) The unpredictability of an equine's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;

(3) Certain hazards such as surface and subsurface conditions;

(4) Collisions with other equines or objects; and

(5) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within the participant's ability.

"Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

Section 663B-2. Equine activities; rebuttable presumption.

(a) In any civil action for injury, loss, damage, or death of a participant, there shall be a presumption that the injury, loss, damage, or death was not caused by the negligence of an equine activity sponsor, equine professional, or their employees or agents, if the injury, loss, damage, or death was caused solely by the inherent risk and unpredictable nature of the equine. An injured person or their legal representative may rebut the presumption of no negligence by a preponderance of the evidence.

(b) Nothing in this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or their employees or agents if the equine activity sponsor, equine professional, or person:

(1) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and the equipment or tack was a proximate cause of the injury;

(2) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity; or determine the ability of the participant to engage safely in the equine activity; or determine the ability of the participant to safely manage the particular equine based on the participant's representations of the participant's ability; or determine the characteristics of the particular equine and suitability of the equine to participate in equine activities with the participant; or failed to reasonably supervise the equine activities and such failure is a proximate cause of the injury;

(3) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or reasonably should have been known to the equine activity sponsor, equine professional, or person, or for which reasonable warning signs have not been conspicuously posted;

(4) Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or

(5) Intentionally injures the participant.

(d) Nothing in subsection (a) shall prevent or limit the liability of an equine activity sponsor or an equine professional under liability provisions as set forth in the products liability laws or in sections 142-63, 142-64, 142- 65, 142-66, and 142-68.

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NEVADA -- Nevada Revised Statutes Annotated 41.519

Limitations on liability; duties of a participant in an equine activity; exceptions; definitions. Effective: October 1, 2015

1. Except as otherwise provided in this section, a sponsor, an equine professional, a veterinarian or any other person is immune from civil liability for an injury to or the death of a participant as a result of an inherent risk of an equine activity.

2. A participant shall:

(a) Act in a safe and responsible manner when engaged in an equine activity; and

(b) Before engaging in an equine activity, know and be aware of the inherent risks of that activity.

3. A person is not immune from civil liability pursuant to this section if the person:

(a) Provided to the participant defective tack or other equipment that caused the injury or death of the participant and the person knew or should have known of the defective condition of the tack or equipment.

(b) Provided to the participant the equine upon or around which the injury or death occurred without making reasonable efforts to determine the ability of the participant to:

(1) Engage in the equine activity safely; and

(2) Control the equine based upon a representation made to the person by the participant concerning the ability of the participant to control that equine.

(c) Owns, leases, rents or is otherwise in lawful possession and control of the property or facility where the injury or death occurred if the injury or death was the result of a dangerous latent condition that was known or should have been known to the person.

(d) Committed an act or omission that:

(1) Was in willful or wanton disregard for the safety of the participant; and

(2) Caused the injury or death of the participant.

(e) Intentionally injured or caused the death of the participant.

(f) Failed to act responsibly while conducting an equine activity or maintaining an equine.

4. A person is not immune from civil liability pursuant to this section in an action for product liability.

5. As used in this section:

(a) “Equine” means a horse, pony, mule, hinny or donkey.

(b) Equine activity” means an activity in which an equine is ridden, driven or otherwise used. The term includes, without limitation:

(1) Shows, fairs, competitions, performances, parades, rodeos, cutting events, polo matches, steeplechases, endurance rides, trail rides or packing or hunting trips.

(2) Lessons, training or other instructional activities.

(3) Boarding an equine.

(4) Riding, inspecting, evaluating or allowing the use of an equine owned by another person, regardless of whether the owner of the equine receives money or other consideration for the use of the equine.

(5) Providing medical treatment for an equine.

(6) Placing or measuring gear or tack on an equine.

(7) Placing or replacing shoes on an equine.

The term does not include a race for which a license is required pursuant to the provisions of chapter 466 of NRS.

(c) “Equine professional” means a person who, for money or other consideration:

(1) Provides to a participant lessons, training or instruction relating to an equine activity; or

(2) Rents or leases to a participant an equine or tack or other equipment.

(d) “Inherent risk of an equine activity” means a danger or condition that is an essential part of an equine activity, including, without limitation:

(1) The propensity of an equine to behave in a manner that may result in injury or death to a person who is on or near the equine;

(2) The unpredictable reaction of an equine to sounds, sudden movements or unfamiliar objects, persons or other animals;

(3) A hazardous surface or subsurface or other hazardous condition;

(4) A collision with another animal or object; and

(5) The failure of a participant to maintain control of an equine or to engage safely in an equine activity.

(e) “Participant” means a person who engages in an equine activity, regardless of whether a fee is paid to engage in that activity. The term includes, without limitation:

(1) A person who assists a participant in an equine activity; and

(2) A spectator at an equine activity if the spectator is in an unauthorized area that is in the immediate area of the equine activity.

(f) "Product liability" has the meaning ascribed to it in NRS 695E.090.

(g) "Sponsor" means a person who organizes or provides money or a facility for an equine activity.

N. R. S. 41.519, NV ST 41.519
Current through the end of the 78th Regular Session (2015) and 29th Special Session (2015) of the Nevada Legislature and subject to revision and classification by the Legislative Counsel Bureau.

********** END **********