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## The Louisville Accident Lawyer Journal

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OVER 30 YEARS EXPERIENCE

We gladly accept  
and appreciate  
your referrals

- We are counselors, not just attorneys
- We meet with our clients personally - not caseworkers
- We want you to understand how the legal system works as it applies to your case
- We will keep you informed and guide you every step of the way

### Why a Newsletter?

You are receiving this newsletter because you are an existing or past client of our firm, or have contacted us about representation. For this reason, this newsletter is not an "advertisement" under Ky. Supreme Court Rule 3.130-7.02(1)(h). It is our way of staying in touch with people who have had a relationship with our firm. We care about the people we have helped and want you to know your relationship is valuable to us, even after your case is over. We hope you find it entertaining and informative, and would love to hear from you if you enjoy it! Our best,  
Brad Harville  
Dana Skaggs

# The Basics of Products Liability

Most people have heard of products liability, but may not know exactly what it means.

Products liability refers to a huge area of tort law where defective products cause personal injury or property damage. You can think of any number of unsafe products that have been toppled by products liability lawsuits over the years. The ones that seem to be in the news the most these days are opioid medications. Past examples would include asbestos, cigarettes, and the infamous McDonald's "hot coffee" case. They can be extremely complex cases involving armies of lawyers and experts.

So, it might surprise you to learn that products liability cases can involve more mundane situations, although they are far less common than auto accident and premises liability cases. In my 33 years of practice of doing both plaintiffs' and defense work, the

products liability cases I've litigated have been few and far between.

That's why it's unusual that I am handling two products liability cases right now. Both are subrogation cases, which means an insurance company has hired me to recover what it paid for property damage caused by a defective product. One involves a 125-gallon aquarium that was sitting in a couple's living room one day and spontaneously shattered due to defective construction. That one caused about \$40,000 worth of water damage. The other involves an over pressurized CO<sub>2</sub> tank that was delivered to a restaurant, that exploded and caused about \$32,000 in damage to the building's structure and contents.

At the heart of all products liability cases, big and small, is the principle of "strict liability." This principle holds that the manufacturer or seller of a product in a defective condition that is unreasonably

dangerous to the user or consumer is liable for the harm caused by the product. This is a distinct theory from negligence, which requires a duty and a breach of that duty.

Invariably, the question of what is a defective and unreasonably dangerous product will require an expert witness. In both my aquarium case and my CO<sub>2</sub> tank case, I have reports from engineers who have inspected each of these products and concluded that they were sold in a defective condition. Even though it may seem obvious that the product caused the damage, you still have to have an expert to prove your case.

If you or someone you know has been injured by a product you suspect as being defective, please call us as soon as possible. We know how to find the experts to prove your case. • BDH



(An unreasonably dangerous cigar?)

## WHEN IS A HORSE A BIRD?

Lawyers are often mocked for their creative arguments, but it is rare when lawyers make fun of themselves. That was the case in *Stevens v. City of Louisville*, a 1975 case that challenged an ordinance that prohibited horseback riding on public streets except on designated bridle paths. Attorney Henry Triplett offered this eloquent argument against the ordinance:



We, therefore, assume that kangaroo riders can employ bridle paths for their purposes but horse riders cannot. An elephant can be ridden on the bridle path, but a horse cannot. If a tiger could be trained, it could be ridden. Is a donkey or a jackass a horse? What about a mule? Does this relate to live horses only or does it forbid a child rocking on a hobbyhorse? What about a mechanical horse? Could a merry-go-round be set up? The ordinance forbids none of these but only relates to the valiant steed who is such a major part of Kentucky's heritage. The trial Court's finding that this ordinance is not discriminatory because it treats all horse riders the same is misfounded. If a horse rider cannot ride his horse but can ride an animal which is not legally a horse, but similar to a horse, then the ordinance discriminates against not only the horse but the horse rider. \* \* \*

The Court of Appeals responded by citing the case of Regina v. Ojibway, a fictional case published in the Criminal Law Quarterly, ©1966, by Canada Law Book Ltd., Toronto:

'This is an appeal by the Crown by way of a stated case from a decision of the magistrate acquitting the accused of a charge under the Small Birds Act, R.S.O., 1960, c724, s. 2. The facts are not in dispute. Fred Ojibway, an Indian, was riding his pony through Queen's Park on January 2, 1965. Being impoverished, and having been forced to pledge his saddle, he substituted a downy pillow in lieu of the said saddle. On this particular day the accused's misfortune was further heightened by the circumstance of his pony breaking its right foreleg. In accord with current Indian custom, the accused then shot the pony to relieve it of its awkwardness.

'The accused was then charged with having breached the Small Birds Act, s. 2 of which states:

'2. Anyone maiming, injuring or killing small birds is guilty of an offense and subject to a fine not in excess of two hundred dollars.'

'The learned magistrate acquitted the accused, holding, in fact, that he had killed his horse and not a small bird. With respect, I cannot agree.

'In light of the definition section my course is quite clear. Section 1 defines 'bird' as 'a two-legged animal covered with feathers'. There can be no doubt that this case is covered by this section.

'Counsel for the accused made several ingenious arguments to which, in fairness, I must address myself. He submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not the issue. We are not interested in

whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced many a horse to eat birdseed for the rest of its life.

'Counsel also contended that the neighing noise emitted by the animal could not possibly be produced by a bird. With respect, the sounds emitted by an animal are irrelevant to its nature, for a bird is no less a bird because it is silent.

'Counsel for the accused also argued that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird but was actually a pony. Obviously, this avoids the issue. The issue is not whether the animal was ridden or not, but whether it was shot or not, for to ride a pony or a bird is of no offense at all. I believe that counsel now sees his mistake.

'Counsel contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that how an animal dresses is of no concern to this court.

'Counsel relied on the decision in Re Chicadee, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different color. A close reading of that case indicates that the animal in question there was not a small bird, but, in fact, a midget of a much larger species. Therefore, that case is inapplicable to our facts.

'Counsel finally submits that the word 'small' in the title Small Birds Act refers not to 'Birds' but to 'Act,' making it The Small Act relating to Birds. With respect, counsel did not do his homework very well, for the Large Birds Act, R.S.O., 1960, c. 725, is just as small. If pressed, I need only refer to the Small Loans Act, R.S.O., 1960, c. 727, which is twice as large as the Large Birds Act.

'It remains then to state my reason for judgment which, simply, is as follows: Different things may take on the same meaning for different purposes. For the purpose of The Small Birds Act, all two-legged, feather-covered animals are birds. This, of course, does not imply that only two-legged animals qualify, for the legislative intent is to make two legs merely the minimum requirement. The statute therefore contemplated multilegged animals with feathers as well. Counsel submits that having regard to the purpose of the statute only small animals 'naturally covered' with feathers could have been contemplated. However, had this been the intention of the legislature, I am certain that the phrase 'naturally covered' would have been expressly inserted just as 'Long' was inserted in the Longshoreman's Act.

'Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and a fortiori, a pony with feathers on its back is a small bird.

'Counsel posed the following rhetorical question: If the pillow had been removed prior to the shooting, would the animal still be a bird? To this let me answer rhetorically: Is a bird any less of a bird without its feathers?'

Based upon this sound logic, the ordinance was upheld.

# Current Trends in Personal Injury Law

The Kentucky Supreme Court recently decided a case involving the liability of a construction company to a 16 1/2 year old trespasser on its construction site. In this case, *Hays v. DCI Properties*, the Court provided an updated treatise on a premises owner's liability to trespassers.

Basically, there is no liability under KRS 381.232, "except for injuries which are intentionally inflicted by the owner or someone acting for the owner." The exception, however, is known as the "attractive nuisance" doctrine involving children, which requires 5 factors:

(a) the place where the condition exists is one upon which the possessor knows or has reason to

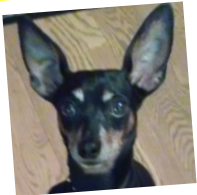
know that children are likely to trespass;  
 (b) the condition is one of which the possessor realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children;  
 (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or coming within the area made dangerous by it;  
 (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved; and  
 (e) the possessor fails to exercise reasonable care to eliminate the

danger or otherwise protect the children.  
 Sounds complicated, right? Well, not really, at least not in this case. Basically the young man had been hanging out with his friends drinking whiskey and smoking marijuana. He then decided to hop on board an asphalt compactor which flipped over and seriously injured his leg. Although there is no strict age cutoff to which the "attractive nuisance" doctrine applies, the Court held that the young man was capable of appreciating and did in fact appreciate the risk of operating a piece of heavy machinery, and affirmed the lower court's dismissal of his case.

BRADLEY D. HARVILLE LAW OFFICES PLLC

## 20 Questions about Kentucky No-Fault

The key to understanding how the legal and medical system works in personal injury cases resulting from motor vehicle accidents in Kentucky.



Casey's Ky. Trivia Question:  
 In what modern-day Ky. city was the first hemp crop grown in 1775?

- A. Danville
- B. Harrodsburg
- C. Maysville
- D. Lexington

Be the first person to answer correctly by sending an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) and we'll mail you a \$5 Starbucks gift card!

## Stupid-Easy Recipe of the Month

### Air-Fried Fish

Lent begins March 6, which means fried fish! If you have an air-fryer, a delicious yet healthy fried fish filet has never been easier. Here's my twist:

#### Ingredients:

- 4 white fish filets (the orange roughly from Costco is great!)
- 1 cup Kroger Italian gluten-free bread crumbs
- 1/4 cup olive oil
- 1/4 cup Egg Beaters

#### Directions:

Mix bread crumbs and oil in a bowl. Dip fish filets into the Egg Beaters, then coat evenly and fully with the bread crumb mixture. Lay coated filets gently into the air fryer. Air-fry for 12 minutes at 360°. Garnish with lemon. Don't forget the tartar sauce! Enjoy!



*Delicious fried fish with no smell or mess!*



Trooper

## Favorite Pet of the Month

Straight from the Valentine's Day party, meet Trooper!

This 6 year old Pointer mix is smart, mannerly, and a snuggler! Trooper is house, leash, and crate trained.

Are you the lucky person that will get to make Trooper a part of your family? Fill out your application at [www.barktownrescue.org](http://www.barktownrescue.org).

Dana serves on the Board of Directors at Barktown Rescue.

Brad and his family love pets, too!

If you want to tell us about your pet(s), send an e-mail to [bdh@harvillelaw.com](mailto:bdh@harvillelaw.com) with a photo and we'll try to put this in a future issue!



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**We want to help you secure the best possible outcome out of a difficult situation that you wish had never happened. If you have been injured, our goal is to obtain maximum recovery in the shortest amount of time it takes to get your case resolved.**



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