General responsibility before the law in the field of Animal Technology

KEVIN DOLAN

c/o Institute of Animal Technology, 5 South Parade, Summertowm, Oxford OX2 7JL UK

Correspondence: atweditor@iat.org.uk

Abstract

Introduction by the ATW editor

The following is an extract from the Critical Review of the Law and the Animal Technician submitted as a thesis by the late Kevin Dolan for the award of Fellowship of the Institute of Animal Technology. Kevin was in a unique position to comment on the laws relating to Animal Technology holding both a degree in law, amongst others, in addition to IAT qualifications and working as an Animal Technologist.

The thesis has not been previously published although Kevin did go on to write and publish Laboratory Animal Law.[1]

Written over 30 years ago some of the law that Kevin reviewed has been superseded e.g. the Cruelty to Animals Act 1876 has been replaced by the Animals (Scientific Procedures) Act 1986. However even the legislation that is now defunct gives a useful background to the responsibilities of the Animal Technologist. Much of the legislation that Kevin discussed is still in place, albeit in some cases amended, but the responsibility of today's Animal Technologists to observe the relevant laws is unchanged.

Definitions of less common Latin and some legal terms have been supplied by me and mistakes are therefore mine rather than Kevin's. References have also been changed by me to reflect the standard practice of this Journal.

Dangerous animals

Dangerous animals are mainly the concern of zookeepers, circus proprietors and dog handlers. Animals which may be regarded as dangerous are however not unknown in the laboratory. Venomous snakes and certain primates may be classified at least legally in this way.

The definition of a dangerous animal has a long legal history and numerous cases have turned on the connotation of this term. Liability for damages caused by a beast often pivoted upon whether the animal causing the damage was 'dangerous' or not. The nature of the offending creature would affect the assessment of its conduct. Originally legal opinion was based on the supposition that the knowledge of what kind of animals are tame and what are savage is common knowledge.

After centuries of controversy the Animals Act (1971) supplied a legal definition, not of 'dangerous animal' but of 'dangerous species'.[2] This blanket approach obviates the need to prove that an individual animal is dangerous.

The test for the determination of the dangerous species is provided by Section 6 (2) of the Animals Act 1971,[2] as follows:

'A dangerous species is a species –

(a) which is not commonly domesticated in the British Islands; and
(b) whose fully grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage they may cause is likely to be severe.'[3]

The question whether a species of animals is dangerous or not is, as with the distinction between animals *'ferae naturae'* (wild nature or disposition) and *'mansuetae naturae'* (animals which are generally domestic, presumed gentle and readily tamed), a question of law and a matter of judicial notice. Subject to the operation of the doctrine of precedent, a classification once made on the basis of an interpretation and application of Section 6(2) is binding,[2] for 'it is not competent to the courts to reconsider the classification of former times and to include domestic animals of blameless antecedents in the class of dangerous animals even when

wandering on the roadsides.'… "Thus, it has been held, at common law, that all elephants are all *ferae naturae* 'very naturally at suckling' and indeed they are likely to be classed as a dangerous species under Section.6 (2),[2] even though the particular elephant in question is tame and causes damage from fright rather than viciousness. (cf. statement of Devlin J. Jim Behrens v. Bertram Mills Circus Ltd)",[3]
Editor's note: cf means compare with

'The second general issue relates to the meaning of 'species'. The only assistance in determining what constitutes a species is provided by section 11 of the Animals Act (1971) which states that 'species includes sub-species and variety.'[3]

Wherever the word 'species' appears, the phrase 'subspecies' may be substituted. According to this interpretation one must examine the dangerousness of animals according to the subspecies to which they belong. Thus, if one subspecies of primate is dangerous and another is not, the categorisation of the particular primate in question would depend on the subspecies to which it belonged. The other interpretation is quite the opposite: all subspecies and varieties of an animal have the same characterisation as dangerous or non-dangerous as is given to the "species as a whole." This confusion should eventually be clarified by court decisions.[3]

The question whether an animal belongs to such a species should depend as at present on a test prescribed by law; in determining the question a court should regard as the decisive consideration the risk to persons or property in the circumstances of this country. A species of animals which is generally domesticated in the British Isles should not be regarded in law as dangerous but with regard to other species there domesticated or non-domesticated character abroad should be taken into account only to the extent that this factor may be relevant to the degree of risk such species present in the circumstances of this country.[3]

A Bill demanding the licensing of dangerous animals in the possession of private persons and even those in Safari Parks is being piloted through Parliament (Dangerous Wild Animals Act 1976).[4] This might produce a clear definition of dangerous animal. An aspect of marauding animals which may be relevant to the Animal Technologist is the recurring problem of dogs which worry livestock. The technician may be involved either because some of his dogs escape or because his farm animals are exposed to this threat.

The legislation on this matter has a long history for example the Dogs Act (1871).[5]

A more modern and specific Act deals with the problem of worrying livestock appeared in the form of the Dogs (Protection of Livestock) Act (1953).[6]

(2) For the purpose of this act worrying livestock means –

(a) attacking livestock, or

(b) chasing livestock in such a way as may reasonably be expected to cause injury or suffering to the livestock or, in the case of females, abortion or loss of or diminution in their produce.

(3) A person shall not be guilty of an offence under this Act by reason of anything done by a dog, if at the material time the livestock are trespassing on the land in question and the dog is owned by or in charge of, the occupier of that land or a person authorised by him, except in the case where the said person causes the dog to attack the livestock.

(4) The owner of a dog shall not be convicted of an offence under this Act in respect of the worrying of livestock by the dog if he proves that at the time when the dog worried the livestock it was in charge of some other person, whom he reasonably believed to be a fit and proper person to be in charge of the dog.[7]

N.B. 'The fact that a dog was neither muzzled nor led is sufficient to prove that it was not under proper control.[8] The 'Diseases of Animals Act (1950)' endowed the Minister with extensive powers to deal with the control of dogs.[9]

'Power of Minister to make orders as to dogs. The Minister may make such orders as he thinks fit for all or any of the following purposes.

(a) for the prescribing and regulating the muzzling of dogs and the keeping of dogs under control;

(b) for prescribing and regulating the wearing by dogs, while in a highway or a place of public resort, of a collar with the name and address of the owner inscribed on the collar or on a plate or badge attached thereto;

(c) with a view to the prevention of worrying of animals for the preventing for preventing dogs or any class of dogs, from straying during all or any of the hours between sunset and sunrise;' [10]

The Animals Act (1971) covers liability for injury done by dogs and provides a defence for a person killing or causing injury to a dog if it is about to worry livestock and there is no other means of stopping it.[2]

The Guidance Notes on the Law relating to Experiments on Animals in Great Britain (GNLEA) (page 32),[12] has a note for those in charge of animal units concerning a group akin to 'dangerous animals' – 'destructive animals'.

'Certain animals which can be used for experimental purposes are classed by the Ministry of Agriculture as being destructive and the Minister has laid down by means of Statutory Instruments pertaining to the 'Destructive Imported Animals Act (1932)' certain regulations with regards both to importation and to keeping them.[13] Species thus regulated include Coypu, Mink, Grey Squirrel, Muskrats, and non-indigenous rabbits. Whilst such animals may be obtained for experimental purposes, it is necessary to have regard to the instructions and restrictions on accommodation and for the experimenter who has the authority of the 1876 Cruelty to Animals Act to obtain a licence from the Ministry of Agriculture of the set or the Secretary of State for Scotland also.'

Non-dangerous animals

This negative term embraces animals not included in the legal term 'dangerous animals'. These supposed innocent animals however may cause damage for which, those in charge of them may be held responsible. The Animals Act (1971) covers this eventuality.[2]

The 'knowledge' of the waywardness of a non-dangerous animal or the 'precarious knowledge' through an employer employee can be assessed in the spirit of the 'scientific action'. The suspicion of the viciousness of an animal can be supposed if:

(a) The animal caused severe damage before.

(b The animal has already attempted to do the harm in question.

(c) There is a good basis for supposing viciousness.

Security

Security is an important element in the avoidance of injuries and damage in connection with animals. The law underlines this need for security in the care of animals; e.g.. 'Animal Boarding Establishments Act (1963)'.[14]

'(3) In determining whether to grant a licence for the keeping of a boarding establishment for animals by any person at any premises, a local authority shall in particular (but without prejudice to their discretion to withhold a licence on other grounds) have regard to the need for securing.

That appropriate steps will be taken for the protection of the animals in the case of fire or other emergency.'

There is a similar clause in the 'Pet Animals Act (1951).[15]

The Codes of recommendations are specific in their demands in respect to security in connection with animals.

(6) Internal surfaces and fittings of the buildings and pens accessible to pigs shall not have any sharp edges or projections likely to cause injury.

(7) Pen floors should be effectively drained. All floors particularly slatted or metal mesh ones, should be designed, constructed and maintained so as to avoid injury or distress to the pigs. Advice should be sought if injury or distress occurs.

(8) Paints and wood preservatives which may be toxic to pigs should not be used on surfaces accessible to them. Particular care is necessary to guard against the risk of poisoning from old paintwork in any part of the building or when second-hand building materials are used.

(9) When planning new buildings, consideration should be given to the provision of an escape route for stock in an emergency; and materials used in construction should have sufficient fire resistance to enable any emergency procedure to be followed.

The Codes of recommendation are also concerned with protecting animals from one another. For example:

(6) Aggressiveness in dry sows presents a severe problem of husbandry. Where the sows or gilts are kept in groups, much depends on the temperament of individual animals but the stockman should ensure that persistent bullying leading to severe injury does not take place.

(56) Precautions should be taken to protect birds against foxes, other predators, dogs and cats.

Directions on security in respect animals comes from an unexpected official source, The Highway Code.[16]

The Highway Code gives suggestions on the proper handling of animals if accidents are to be avoided, whether the animal is dangerous, likes snakes being transported in the back of a car or merely clumsy cattle in a country lane.

'If you have an animal in your car, keep it under control. Make sure it cannot disturb you while you are driving. Do not let a dog out of the car onto the road unless it is on a lead.'

If you are riding a horse, keep to the left.

If you are on foot, and leading an animal on a road that has no footpath, walk on the right-hand side of the road. 'If you are herding animals along or across the road and there is someone with you, send him/her along the road to warn drivers….'

The GNLEAs set standards for such of security for the animal house:

'Security: aim at a closed community in a self-contained unit with private lift or entrance(s) for staff, animal foodstuffs et cetera; not overlooked or, if so fitted with opaque window is not (not blinds); quiet and sheltered from cold wind."[12]

The GNLEA (P.50.),[17] quotes from the Animal Boarding Act (1963) concerning security with the implication that the same precautions would be act in an animal unit.[18]
'18. All heating appliances must be of such construction as to constitute no risk of fire.

19. Animals and equipment shall not be placed or kept in such a position as to render ingress or egress difficult in the case of fire or other emergency.

20. The licensee shall ensure that a responsible person shall at all times be in, or within, reasonable distance from the premises for the purpose of giving warning and taking other necessary steps in the event of fire or other emergency. In the case of premises which are locked-up, outside business hours, the Licensee shall appoint a responsible person residing within a reasonable distance of the premises to have custody of the key. The name and address of such person shall be displayed in legible characters on the front door, or windows of the premises and be notified to the local fire brigade. An adequate and accessible supply of water and sand and/or an efficient fire extinguisher must always be available…'

Escape

Security does not only imply the protection of the animal but also its restraint for the prevention of escape. Escape may be the result of slipshod security. The obligation to avoid damage to persons or property by preventing the escape of mischievous animals is clear in law.

"Blackburn J., Pronounced the doctrine which is now known as the Rule in Rylands versus Fletcher; he said 'the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is prima facie is answerable for all the damage which is which is the natural consequence of its six but escape" (Littlewood Report.IE i EX. 265, 279 – 80.)[19]
Editor's note: Prima facie – first sight/impression

Escape without actual damage may sometimes constitute an offence.

The Highways Act (1959)[20]

'135. Penalties in connection with straying animals;-

(1) 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 keepers shall be guilty of an offence:'

provided that this subsection shall not apply in relation to parts of the highway passing over any common, waste or unenclosed ground."

The Agriculture Act (1947) Section 99,[21] stipulates that the Minister may serve notice in writing on the occupier of land requiring him to take steps to ***prevent the escape*** of animals from land on which they are kept in captivity.

The Modern Law of Animals Page 44) has apt remarks on this subject.[22]

'It should be noted… That the that it is not unlawful to keep either an animal of a dangerous species or any other animal known to be dangerous;' (it can be noted in passing that a bill is being steered through Parliament to demand a licence for the possession of a 'dangerous animal' by a private individual or even by Safari Park proprietors – March 1976) 'for the wrong is in allowing it to escape from the **keepers control** with the result that it does damage. It has been pointed out that to admit of a rule that it is unlawful to keep dangerous animals would mean that "the proprietors of the Zoological Gardens would live in a perpetual state of lawbreaking.[23]

'Liability and under section 2 (1) of The Animals Act (1971) is strict.[2] He who keeps an animal of a dangerous species does so at his peril. It is no defence to an action for keeping such an animal which has injured the plaintiff that the defendant did not know of its ferocity. For it is still the law "that it cannot be doubted that a person who keeps an animal (of a dangerous species) must prevent it from doing injury, and it is immaterial whether he knows it to be dangerous or not.'

Fencing

Because of the economic value of farm animals and because of the long legal history of cases concerning damage caused by straying cattle, the question of fencing has been extensively dealt with by the courts. In this area there is an abundant amount of case law.

Fencing is legally described as "the construction of any obstacle designed to prevent animals from straying": (Animals Act (1971) section 11).[2]

This will mean that fencing will include not only fences but also, for example, ditches though only where the purpose of the ditch is to contain livestock and not where its sole purpose is to carry away water.'[24]

'The duty to fence is only to keep reasonable fences to prevent the escape of ordinary cattle in ordinary circumstances.'[25]

'There is no negligence when cattle are contained by an electric fence in good order and charged with current at all material times and yet a cow gets into the highway in some inexplicable way. Similarly, the use of a 4-foot fence to contain heifers in heat was reasonable, even though heifers in such a condition may be become unruly and jump fences. As the judge said: 'it would surely not be reasonable to ask farmers whose properties are adjacent to a public highway to erect 8-foot fences or such fences that no animal at any time would ever be able to break out of. Cows are persistent and in spite of their apparent stupidity, are very resourceful when they wish to go from point A to point B.' [26]

... It has been accepted that the heavier the traffic the higher the duty of care:" [126]

Negligence

Negligence – a source of injury and escape may bring liability or prosecution in its wake. Since the Animal Technologist may be the man on the spot in an animal enclosure, he may easily be involved in consequential litigation. Serious disputes of this nature are settled by court decisions and when a crisis occurs naturally legal counsel will be sought.

'Negligence signifies the breach by a defendant of a legal duty to take care not to damage the person or the property of the plaintiff.'

Fortunately the technician has no need to be versed in the complicated refinements of negligence but it would be useful to be aware of the hazards arising from negligence.

'There has never been any doubt since the 17th century that an action will lie for the negligent keeping of animals which cause harm to the plaintiff. There is, therefore, a common law duty to take reasonable care to prevent your animals from causing injury, whether or not they escape from your land or control. This liability was quite independent of the common law heads of liability peculiar to animals and is quite independent of any statutory liability imposed in their place by the Animals Act 1971.[2] As Lord Atkins has said: "it is also true that, quite apart from the liability imposed upon the owner of animals or the person having control of them by reason of knowledge of their propensities, there is the ordinary duty of a person to take care either that his animal or his chattel is not put to such a use as is likely to injure his neighbour..."[27]

Editor's note: *heads in this case refers to the elements in a claim of liability and subsequent compensation claim.*

It is important to know that ultimately what constitutes 'reasonable care' is a question of fact, in each case.

As in all torrts, so in the case of negligence, foresight is a factor to be considered. If a result of an action or an omission could in no way be foreseen, then negligence is out of the question. The lack of foresight must however be taken in a very broad sense.

Editor's note. What is a tort? The law of tort is wide-ranging body of rights, obligations and remedies applied by the courts in civil proceedings. It provides remedies, relief for those who have suffered loss or harm following the wrongful or negligent acts of others. A tort is a civil wrong by the 'tortfeasor' that unfairly results in loss or harm to another.

With regard to liability for accidents brought about by an animal running onto the highway and causing, let us say, a car to swerve and crash, the question now is quite simply one of negligence. Did the owner or keeper take all reasonable steps to prevent the animal running onto a busy road, out of control and bewildered where it could easily cause chaos? If now seems clear that negligent failure to exercise the necessary measure of control can result in an action being booked brought successfully against the owner.[28]

It is not presumed that technicians spend their time herding large numbers of rodents along public thoroughfares but some technicians may be concerned with errant ruminants. Special attention should be paid to possible injury, either from animals or other sources in the animal unit, to visitors.

'Visitors in this context include people who come upon the property either in the occupiers interests (e.g.plumbers) or in their own (e.g.guests) or in the exercise of some right conferred by law and also people who enter as a result of a contract between the occupier and some third party.'[29]

It is the duty of the occupier to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted to be there.

1. An occupier may expect that the person in the exercise of his calling will appreciate and guard against any special risk ordinarily incident to it.

2. A warning does not absolve the occupier of liability unless it is sufficient to enable the visitor to be reasonably safe.

3. No duty is owed in respect of risks willingly accepted by the visitor.

4. In certain areas and occupier may vary or exclude his duty of care notably given by notices to that effect to the to a licensee, or by varying or excluding the duty of care as a term of a contract between the occupier and the visitor.'[30]

Nuisance

Public nuisance

'A public nuisance is such an inconvenient or troublesome offence annoys the community in general, and not a few individuals only and is indictable as and misdemeanour. A nuisance which materially affects the reasonable comfort and convenience of persons within its sphere, may be a public nuisance. An offensive trade, either from the noise or smell, carried on to the annoyance or discomfort of all persons in the neighbourhood, is a nuisance; keeping ferocious animals without proper control is a public nuisance;'[31,32]

'The question whether the activity is reasonable depends on all the circumstances of the case… A collection of noisy animals might be a nuisance in a residential area, though not in the open country. Smells and noise are perhaps the most common form of nuisance which may be caused by laboratory animals but is escaping infections might also constitute nuisance, though these will be more properly be dealt with in an action for negligence.'[33]

As in the case of negligence, foresight is also a factor in cases of **nuisance**, whether based upon a lack of care or not, and whether public or private.[34]

A **Private Nuisance** is a wrong which incommode a person in the use and enjoyment of his land. '… It may be an actionable nuisance to contaminate your neighbour's water supply with droppings from animals on your land.'[35]

The various sources of nuisance associated with an animal unit are well summarised in Modern Law of animals.[35]

'Just as such escapes may constitute a nuisance, so also may the conduct of animals remaining on the defendants's land. If pigs are kept on the defendents land so that the smell from them **unreasonably** interfere with the plaintiffs enjoyment of his land, this is a nuisance and the same may be said for other smells, such as those from horses.' (cf. Benjamin v Storr(1874)[36] Liability in nuisance extends also to **unreasonable** noise made by animals on the defendant's lands, as with the crowing of cockerels, the barking of dogs or the noises of horses in a stable. It is probable also that it is actionable nuisance to keep diseased animals on one's own land in circumstances such that their disease "infects one neighbour's animals and therefore interferes with his use of his land.'[35]

The proper disposal of radioactive weight is relevance to the avoidance of public nuisance.

'…the disposal of radioactive waste is controlled by the Department of the Environment (DoE) which issues to each registered user of radioactive materials a certificate of authorisation. This states the maximum amounts of radioactive waste which may be disposed of per month by specified routes. The actual amounts of activity authorised for disposal by various routes are prescribed by the DoE in the light of the needs of the establishment and local conditions. The commonly used methods of disposal are discharge into the sewers, incineration and disposal via the domestic refuge service.

The radioactive waste which arises from the use of radioactive materials in animal experiments occurs in three main forms; radioactive bedding and excreta, radioactive carcasses and liquid waste including unwanted radioactive solutions, urine and other body fluids, and water from cage or animal penned washings. In addition a small amount of solid wastes in the form of swabs, disposable syringes and paper may arise.

In most establishments it will probably be possible to dispose of all liquid waste by discharge into the sewers via the ordinary drainage system. However, if more than small amounts e.g.10 μ Ci/0.1m^3, of very high toxicity nucleotides, or millicurie or larger amounts of medium toxicity nuclides are used, special disposal arrangements may be required for all or part of the liquid waste.

The disposal of contaminated bedding and other combustible solid waste by incineration is frequently permitted or, if the material contains only small quantities of moderate to low toxicity radio nucleotides, less than 10 μ Ci/ 0.1$m^3$0 per m^3, disposal via the domestic refuge disposal service operated by the Local Authority may be allowed.

The disposal of radioactive carcasses may sometimes present problems. For small animal carcasses containing no more than moderate amounts of medium or low toxicity nucleotides, disposal by incineration or by maceration and flushing into the drains may be permitted.'[37]

In the field of disposal of any type of waste the local authority have has wide powers of legislation which should be consulted and must be observed.

'The reader is more likely to be concerned with bylaws made under Sections.81 and 82 of the Public Health Act (1936);[38] section 81 provides: –

A local authority may make bylaws for preventing: –

(a) the occurrence of nuisances from snow, filth, dust, ashes and rubbish;

(b) the keeping of animals so as to be prejudicial to health.

Under section 82 of the 1936 Act a local authority may make bye-laws governing the disposal of any faecal or or offensive or noxious matter or liquid.'

The disposal of waste is also regulated by the Public Health (Drainage of Trade Premises) Act 1937 which controls the nature and quantity of effluent which may be discharged into public sewers.[39] Under Section 63 of the Public Health Act (1961) premises for scientific research or experiments,[40] are made subject to the 1937 Act.[39,41]

The GNLEA, pages 33 to 35 give instruction on the procedures of correct disposal of waste material.[42]

'The three common methods of disposal of the killed animal are: a) incineration, b) maceration and c) collection.

a) *Incinerators;* Incinerators vary… In efficiency… for animal house usage where there may be a high percentage of wet material for disposal. Difficulty may also arise from malodorous gaseous effluent and special problems are associated with infectious and radioactive materials. Consult a specialist engineer who can advise you on your particular requirements.
(Kevin's notes: I admit the above paragraph is far from law but it was seen fit to include it in the GNLEA.)

b) Maceration by means of a commercial size waste disposal unit is an excellent means of disposing of the majority of laboratory animal species and will usually be acceptable to the Public Health Authority and the Department of the Environment, the latter of whom must be consulted with regards to all details concerning **radioactive waste disposal**. An important detail with regards to installation is that the outflow drained should not be less than 4 inches in diameter. It is not recommended for disposals disposal of feathered carcasses.

c) Collection means disposal within a waterproof bag container by the council refuse collection and requires prior consultation and agreement with the local sanitation authorities. It is obviously not suitable for the disposal of infective material.

With regard to the carcass meat of livestock which has been used for experiment and which may have considerable market value, there will be no objection to the sail, provided the necessary permission is obtained from the meat inspection authority and that all relevant regulations are complied with. You are reminded however that the live experimental animal may not be moved from premises registered by the Home Office to other than another registered place.

Animals exposed to ionising radiation

When the levels of radiotoxicity are liable to be higher than dosage associated with tracer isotopes, the special requirement is that the accommodation and the arrangements for disposal of contaminated material and effluent, must comply with the Radioactive Substances Act (1960),[43] and that the animal house must be registered with the DoE in addition to the Home Office and authorisation for the accumulation of disposal of radioactive waste be obtained.[42]

The technician's concern with the avoidance of causing a nuisance and his responsibility in the matter will vary with the amount of authority he/she has within the establishment.

Liability

'The law affecting the animal house involves both civil and criminal liability. Where injury, loss or damage is caused by animals or by the keeping of animals, the injured party may recover damages in the civil courts by bringing an action in the county court, if the claim is small, or the Queen's Bench Division of the High Court, if the claim is more substantial. The right to bring such action is principally contained in common law, that is in the law as established by decided cases. To a lesser extent it is created directly by Act of Parliament, such as Occupiers Liability Act (1957) and the Animals Act (1971).[44]

The Chief Technician, particularly, may easily be involved with the causes of liability e.g. lack of security, escape, negligence, nuisance, contravention of Safety Regulations, etc. The actual decisions on liability, the apportioning of blame and the allotting of compensation will be settled far from the animal house in a court of law, perhaps, on the part of the Company or Institute by lawyers. It would be presumptuous and superfluous to expound on the matter of liability but some notes on the matter are relevant. One major Act concerned with liability is simply entitled the Animals Act 1971.[2]

'An Act to make provisions with respect to civil liability for damage done by animals and with respect to the protection of livestock from dogs; and for purposes connected with these matters.' (12th of May 1971 preamble to the Act).

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'There is no definition of animal provided by the Animals Act (1971, but it is suggested that the term would include birds reptiles and insects, but not bacteria.'[45]

'One of the features of the Animals Act (1971) which has provoked comment is that it is written in English which ordinary educated people may understand. Indeed, the Parliamentary draughtsman were complimented for having got the Act into such an **unfamiliar** shape. Nevertheless, there are a number of difficulties of interpretation with this Act, primarily because it is overlaid under upon a basis of common law liability. Even though the specific heads of common law liability were abolished, much of the learning from them will be a positive apposite in applying the new statutory heads of liability.'[46]

The notes on general interpretation in the Act are aids to understanding the act and its application.

'common land' and the term 'town or village green 'have the same meaning as in the Commons Registrations Act (1965).[47]

'damage' includes the death of, or injury to, any person (including any disease and any impairment of physical or mental conditions):

'fault has the same meaning as in the Law Reform (Contributory Negligence) Act 1945.[48]

'fencing' includes the construction of any obstacle designed to prevent animals from straying;

'livestock' means cattle, horses, asses, mules, hinnies, sheep, pigs, goats and poultry and also deer not in the wild state and, in sections 3 and 9, also while in captivity pheasants, partridges and grouse;

'poultry' means the domestic varieties of the following that is to say fowls, turkeys, geese, ducks, guinea-fowls, pigeons, peacocks and quails;

'species' include subspecies and variety.

The 1971 Act binds the Crown. The Act repeals repeals parts of the Dogs Act (1906) and amends the Dogs (Amendment) Act (1928).[49]

In the context of the 1971 Act – a **keeper** is a person who owns the animal or **has it in his possession**. He remains the keeper until the animal comes into the ownership or possession of another person. Thus if the animal has escaped and is run running wild, the person who was the keeper before it escapes remains in law the keeper until it is recaptured and taken into ownership or possession by another person.

Old principles of application, such as *'scienter action'* still have lingering influence in the Act.

Editors note: The scienter action is a category within tort law in some common law jurisdictions that deals with the **damage done by an animal directly to a human**. It had a long history in English law until it was abolished by the Animals Act 1971.

'The replacement for the scienter action is to be found in section 2 as follows:

(1) Where any damage is caused by an animal which belongs to a dangerous species, any person who is the keeper of the animal is liable for the damage, except as otherwise provided by this Act.
(2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if –
  (a) the damages of the kind the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and
  (b) the likelihood of the damage or if it being severe was due to characteristics of the animal which are not normally found in animals of the same species are not normally so found except at particular times or in particular circumstances; and

(c) those characteristics were known to that keeper or were any time known to a person who at the time **had charge** of the animal as the keeper's servant.'

It would seem that as an animal technician would rarely possess the animal, in this context he would not be the **keeper**, but would certainly be the one who **had charge** of an animal.

There are accepted forms of defence in law in cases of liability for damage caused by animals.

1) A person is not liable under section 2 of the 1971 Act for any damage suffered by a person who has voluntarily accepted the risk thereof.

2) A person is not liable under section 2 of this Act for any damage caused by an animal kept on any premises or structure to any persons trespassing there if it is proved either –

   a) that the animal was not kept there for the protection of persons or property; or
   b) (if the animal was kept there for the protection of persons or property) that keeping it there was for that purpose was not unreasonable.

3) A person is not liable under Sections 2-4, of this Act for any damage which is due wholly to the fault of the person suffering it.

4) Contributory negligence can be used as defence for reducing liability. In cases, however, where there is warning or notice of the dangerous characteristics of the animal, this does not automatically indicate contributory negligence on the part of a plaintiff who has gone near the animal.[50]

Liability towards trespassers

The devious and dangerous pursuits of some extreme pressure groups render concern about trespassers topical.

Although the trespasser is an unwelcome intruder, some care is due to him and even protection from dangerous animals must be provided (cf. Guard Dog's Act 1975).[51]

'… though the occupier is not enjoined to take special care as to the state of his premises in respect of the uninvited, he must nevertheless refrain from setting traps for them; and yet he may use reasonable means – such as placing glass or spikes on a wall – to prevent their entry. However, where the presence of the trespasser is known to or reasonably to be expected by the occupier the latter must, according to what is probably the best view expressed in the House of Lords in Robert Andy & Sons (Colliers) Ltd versus Dunn Breck (1929) A.C 358 refrain from acts deliberately aimed at doing harm to the trespasser or done with reckless disregard for his presence.'[51]

and

'Generally the occupier is not liable to a trespasser unless he injures him either intentionally or recklessly."

'The position of children may also cause considerable difficulty. If the occupier has an attraction on his premises which draws children onto the premises, those children may be treated as licensees and therefore lawful visitors and not as trespassers, unless the occupier takes reasonable steps to keep the children out. Again the occupier may be liable if he has on his premises something which attracts children and if the children so attracted are then injured by a concealed hazard. Animals used of laboratory work might well constitute an attraction to children and the occupier of the laboratory might well be held liable for injuries suffered by children, unless he had taken every reasonable precaution to keep the children out. This duty is quite onerous. In decided cases where there has been an attraction on land the occupier has helped children who managed the land through insubstantial fencing'.[33]

The following quotation illustrates the complexity and unpredictable nature of liability due to the behaviour of animals.

One general problem is that it is not always easy to determine in what circumstances the plaintiff is to be considered to have brought his injury upon himself. A small boy who put his arm around a dog and kissed it to induce it to play was considered to be the cause of his own injury when the dog bit him (Lee versus Walker (1939).) but another small boy who lay besides a dog and put his arms round its neck was able to recover. (Charlwood versus Craig (1851)). Both were cases involving the 'scientor action' but both were seen relevant to liability under Section 2 (two) of the Animals Act (1971).[2] Again, when a child, a lawful visitor chose to relieve herself near a lion's cage, the defendants, the proprietors of the circus, were held liable when the child was mauled by the lion. The child was not considered to be the cause of her own injury. (Pearson versus Coleman Bros. (1948).[53]

The practical conclusion for the Animal Technician who has care of dangerous or vicious animals, is to keep his unit closed to the public and to be extremely selective as regards visitors, especially in respect to children.

N.B. Reference to the Health and Safety at Work Act (1974), [54] is apt here. A failure on the part of any person to comply with an approved code does not of itself give rise to either civil or criminal liability but if there are any criminal proceedings the provision of any relevant code of practice shall be advisable.

The notions of negligence and liability are associated closely and frequently confused.

'A further significance of determining whether the action for injury done by an animal is one in negligence or one of strict liability under the Animals Act 1971 is for the latter no fault on the part of the defendant needs to be proved. Liability is strict with the one qualification of proof of knowledge under section 2 (2), though this may often be equivalent to proof of fault.[2] A corollary of this general distinction between liability in negligence and under The Animals Act 1971 is that the rules of remoteness of damage appear to be different. It has been suggested already that just as with the scienter action and cattle trespass at common law, the statutory liability under Section 2 and Section 4 of The Animals Act 1971 attracts a test of remoteness based upon direct consequence. However the test of remoteness in negligence is now that of reasonable foresight of consequence. Thus the statutory actions based on strict liability could give rise to a greater extent of liabilirty than in negligence.'[55]

Protection of the technician

There are numerous legal requirements to ensure that a technician is duly protected from harm in his place of work. In general these obligations fall upon the employer but it is useful for the technician to be aware of the professional hazards and legal implications.

'The increasing stringent requirements of modern experimental work have made corresponding demands upon the husbandry of laboratory animals and have greatly increased the complexities of construction, environmental control and waste disposal in the animal house. This in turn has considerably enlarged the range of electrical, mechanical, chemical and other hazards to which workers are exposed. The dangers associated with the use of carcinogenic agents, radioactive isotopes, pathogenic microorganisms and other experimental materials are common to both laboratory and animal house and research workers using such agents should be fully conversant with the hazards involved and the precautions that need to be taken. In the laboratory, safe containment and use of potentially dangerous materials and equipment is rarely a difficult matter but their use in animal experiments poses problems of human exposure which are frequently difficult to assess and control. Thus, in the animal house there is a wide range of hazards which includes those associated with experimental procedures as well as those associated with the care of animals and ancillary equipment.

After installation by the suppliers of much equipment is maintained by Animal Technicians. A thorough knowledge of the proper use and care of machinery, pressure vessels, control systems, compressed gases and other equipment is essential not only for the safety of the workers but also for the health and well-being of the animals.' [56]

Animals themselves can give rise to two types of hazards as far as the technician is concerned – disease or injury. The first hazard comes under the heading **Zoonoses** and the second under the heading **Attacks**.

Zoonoses have been defined by the World Health Organisation (WHO) as, 'those diseases and infections which are naturally transmitted between vertebrate animals and man.' List of over 150 to 200 zoonoses have been compiled and new ones are added daily.'[57]

There seems to be little direct legislation in this matter. 'Agriculture (Miscellaneous Provisions) Act 1972.'[58]

1, Control of Zoonoses. – (1) this section shall have effect with a view to reducing the risk to human health from any diseases of, or organisms carried in, animals; and the Ministers may by order designate any such disease or organisms which in their opinion continues such a risk as aforesaid.'

This is a general directive providing the Minister with contingent powers to deal with special cases.

A co-relation between the hazards of zoonoses and other hazards from dangerous animals is made in Modern Law of Animals page 47.[59]

'If, therefore, an animal of a dangerous species is carrying the disease and the plaintiff is infected thereby, and action will lie under Section 2 (1) The Animals Act 1971.[2] If the injury to the plaintiff takes the form of nervous shock or physical injury directly attributable to shock, such damage is actionable under section 2 (1).'[59]

It is pointed out in The Laboratory Animal – Principles and Practice page 197,[60] that

'those who work with poliovirus are always protected by vaccination. The same precaution is normally taken with all staff where work may bring them into contact with human pathogens….

A relevant note occurs in the IAT Manual 1st edition.[61]

'Prior to approval, animal handlers will be required to produce evidence of physical fitness and good health, including freedom from active tuberculosis. All animal handlers should receive six monthly chest x-ray examination and tuberculin negative personnel should be retested for tuberculin conversion at six monthly intervals. In the absence of anti-tuberculosis vaccination, tuberculin convertees will be laid off duty until further evidence of freedom from active tuberculosis has been produced. It is advisable that protection against tetanus and the enteric group of fevers should be offered to all animal handlers as a routine. (These recommendations are primarily concerned with the handlers of monkeys in transit.)

Attacks: The law appears ambiguous in its attitude towards injuries excess sustained by an employee from an animal in his charge.

The Animals Act 1971[2]

Section 6 (5) where a person employed as a servant by a keeper of an animal incures risk incidental to his employment he shall not be treated as accepting it voluntarily' (he could, therefore claim damages in the case of an injury in the pursuits of his task.)

Previously it was presumed that an employee knew of and accepted risks inherent to his job e.g. the custodian of a dangerous bull or a horse-breaker. In the laboratory setting vicious primates or venomous snakes might call for similar consideration.

Since the 1971 Act only when there is actual rather than presumed assumption of risk can it an employer escape liability.

Radioactivity

Like safety in general this topic extends over a much wider spectrum than the scope of this work. While many details of legislation on this subject can be ignored in this review some points are relevant.

D.M.Taylor in Safety in the Animal House (page 76 – 79) summarises the legal stipulations.[37]

'In addition to the provisions of the Radioactive Substances Act, the Department of State responsible for making safety regulations in several spheres of activity have drawn up Codes of Practice for the use of ionising radiation is….. for most users of radioactive materials in animal experiments the appropriate codes will be 'the Code of Practice for the Protection of Persons exposed to Ionising Radiations in Research and Teaching'. Issued by the Department of Employment and the 'Code of Practice for the Protection of Persons against Ionising Radiations arising from Medical and Dental use' which is issued by the Department of Education and Science and the Department of Health and Social Security.

The Codes of Practice require that every establishment shall make preparations for dealing with an accidental spillage of a large quantity of radioactive material or accidental contamination of personnel. The preparations for dealing with such an emergency and the action to be taken during and after the event must be included in local rules.

It is recommended that the equipment needed for dealing with an emergency should be kept available at all times.

While in most animal houses the likelihood of a large spillage of radioactive material is remote, it is essential that all staff should be conversant with the procedures to be adopted should an emergency occur.[62]

'The ultimate responsibility for radiation safety lies with the employer but the primary responsibility for protecting himself and his colleagues from the harmful effects of radiation lies with the individual worker. It is essential that before starting radiation work, every worker is given instructions in the nature of the risks and the reasons underlying the safety procedures he or she is required to practice.'

Other relevant points of radiation hazards

Regulations made under the 'Radioactive Substances Act (1948 and 1960)' are applicable not only to corporate bodies but also to individuals.[63]

'Section 6 (3) Regulations made under this section may provide for imposing requirements and prohibitions and restrictions on employers, **employed persons** and other persons.

(4) Any person who contravenes or fails to comply with any regulation made under this section or any requirement, prohibition or restriction imposed under such regulation shall be guilty of an offence'.

Points from Codes of Practice

'5.3.1. Each designated person must, except as mentioned in the following sentence, wear suitable photographic film in an appropriate holder to measure the cumulative doses of external radiation he receives. In cases of exposure to fast neutrons or to low energy beta radiation, e.g. from tritium, carbon-14 and sulphur 35, special measuring techniques are necessary. Advice can be obtained from the Advisory and Information unit of the Ministry of Labour or from Radiological Protection Service.
Editor's note: Now Department of Work and Pensions

6.2.2.1 Every designated person should be re-examined annually to check continued fitness for such work, unless it is clear from personal monitoring that he is consistently receiving no more than the maximum permissible dose for non-designated persons.

9.9.2 mops, cloths, scrubbing brushes and any other article used for cleaning controlled areas should be clearly marked and must not be used for any other purpose.'

The GENLEA (pages 28 to 34) supplies instructions concerning the protection of technicians.[64]

'Under this heading three aspects require consideration:-
a. Access

b. Fire precautions
c. Human health hazards
in order that the importance of these matters be fully recognised, it is recommended that a 'Safety Officer' be appointed.'

Zoonoses
'Infection arising from zoonoses or the improper handling of infectious materials … education in the diseases of animals transferable to man and the handling of infectious material must be part of the normal training of all staff. If disease occurs the patient's medical practitioner must be made aware of the particular hazards to which he may have been exposed.'

Human health hazards
These are mainly: – injury arising from trauma, exposure to toxic materials, e.g. formalin vapour or ionising radiation, electrical or gas supply faults, allergies, bedding mites, etc.'

'First-aid equipment must be available, together with instructions for dealing with electrocution and exposure to particular toxicity hazards that may exist.'

Radioactivity
'Protection of personnel is paramount and guidance in this respect can be obtained from 'Radiological Protection in Universities 1966' published by the Vice Chancellor's Committee of the Association of Universities of the British Commonwealth, the Department of Health and Social Security and the Ministry of Labour have also published 'Codes of Practice relating to radiation hazards'.[65]

Fire precautions
in addition to the necessary fire points and appliances, it will be necessary to evolve means of access in case of fire when attendants are not normally present.'[66]

The technicians responsibility before the law

In legal parlance the technician is a "servant" – a source of legal privilege in many respects.

'According to the standard definition a servant is any person who works for another upon the terms that he is to be subject to the control of that other person as to the manner in which he shall do his work… Although no new definition of a servant has yet gained currency, the modern servant begins to look different from his prototype – the manual or domestic worker.'[67]

'Masters (employers) are held 'vicariously' liable for torts committed by their servants (employee) in the course of their employment, i.e.they are held liable for the wrong of a servant even though the tort is one which they have not ordered or authorised. This is a common- sense rule, for employees are usually people of slender means and it is fair that an injured plaintiff should be entitled to seek common compensation from those who control and profit by the organisation by which he is employed though it should be noted that in legal theory (though practice usually parts company with theory, since no one sues a "man of straw") there is nothing to prevent the master from making good his own loss by claiming against the servant tortfeasor.'[67]
Editor's note: Tortfeasor – and individual who has been found to have committed a civil offense that injuries another party.

"For instance, hospital authorities have been held vicariously responsible for the negligence of nurses, radiographers and even of whole-time assistant medical officers; and companies are regularly made liable for the torts of their executive.'[67]

'Clearly a master cannot be made liable for every wrongful act which his servant commits but only for wrongs committed 'about the Masters business. Whether any particular act does thus fall within the 'scope of an employment' must always be largely a question of fact.'

It should be noted that the master may be held liable even if he has prohibited the servant from doing the act in question. Though prohibition may be relevant in determining whether the act was committed in the 'course of employment', it cannot, of itself, exculpate the master: if the law were otherwise masters would always escape liability by the simple expedient of prohibiting their servants from committing any torts during their service.[67]

The amount of responsibility expected from a technician will be parallel with the degree of care demanded by his duties.

'… such care will be required as a reasonable man could consider necessary according to the danger potential of the article: failure to act in the appropriate way will constitute negligence. Moreover, where the danger to be anticipated if insufficient care be taken is such as ought to be put a man especially upon his guard", (e.g., dealing with the highly infected and difficult to contain animals,) 'the law may demand of him a degree of foresight, higher than foresight of the probable. (cf. Overseas tankship (U.K.), Ltd V Miller steamship company. Pty Ltd (1967) AC.617)[68]

'… necessity may sometimes excuse what might otherwise be lack of care. If a lawyer undertakes to amputate your leg and gangrene sets in through lack of skill, he will be answerable. (*imperitia culpea adnumeratur* – [*translation* lack of skill amounts to a

fault], amounts to fault in English law just as it did in Roman); but it would be otherwise if he were to operate in the case of necessity to save your life when far from proper help.'[68]

Dangerous Animals. In the first instance it is the **keeper** or **one in control** of an animal that is responsible for damage caused by its behaviour. The technician will often be performing this role. Fortunately it is possession rather than control of the offending animal which takes priority in the matter of liability.

'The requirement that the proper defendant should be the possessor of the livestock will exclude from liability those who have an interest less than possession. If livestock are in the possession of a farmer than his cowman, as an employee, will merely have custody of the livestock in his charge and the cowman will not be held liable under section 4 of The Animals Act if the livestock stray.'[69]

It is however, the knowledge of the animal possessed, by the one caring for it, which is important in law.

'The **keeper** will be deemed to have knowledge of the animal's abnormal characteristics if they 'were at any time known to a person who at that time had charge of the animal as it is that **keeper's servant**.... Again, knowledge by the defendant servant that cattle, entrusted to their control to be driven along the highway, were dangerous, has been held to be the knowledge of the master.'[70]

Cruelty to animals

In the matter of cruelty to animals, within the terms of the 1911 Act, the avoidance of causing suffering is a personal obligation. The extent to which suffering can be caused or prevented will be scaled in keeping with the position of the technician in the animal unit. It is applicable however, whether his duty is merely packing animals for transport or is the overall supervision of a complete animal house. The employee cannot always escape under the umbrella of a corporation or firm.

Agriculture (Miscellaneous Provisions) Act (1968)[58]

Part 1. Welfare of Livestock.

Prevention of unnecessary pain and distress for livestock.

Interpretation. (4) where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.'

Home Office licence. A technician holding a Home Office licence to carry out experiments upon animals is personally responsible for the observance of the conditions etc., laid down in the licence.

In many cases a licence is issued to a technician under the supervision of a senior scientific member of staff. In these cases the responsibility of the technician is diminished.

The new Safety Act

The Health and Safety at Work Act (1974) imposes new responsibility on the technician as it stipulates that in some cases it is the duty of an employee to be concerned with safety.[71]

'Section 7 it shall be the duty of every employee while at work:-

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; is) (e.g.leaving the cage of a dangerous animal opened) and

(b) as regards any duty or requirement imposed on him his employer or any other person by or under any of the relevant statutory provisions, to cooperate with him so as so far as it is necessary to enable that duty or requirement to be performed or compliant with; and

S: 6 (3) it shall be the duty of any person who erects or installs any article for use at work in any premises where that article is to be used by persons at work to ensure, so far as is reasonably practical, that nothing about the way in which it is erected e.g. cage racking) or installed makes it unsafe or a risk to health when properly used.

An employee is not protected from the error of his ways merely by the fact of being only an employee.

S. 36 (1) where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first mentioned person.'

Ionising Radiations

Some points in the codes of practice concerning responsibility as far as individual technician is concerned.

'Section 2.4 Responsibility of Individuals

2.4.1 It must be impressed on every individual working with ionising radiations or radioactive substances that he has a duty to protect both himself and others from

any hazard arising from his work and that he must not expose himself or others to ionising radiation to a greater extent than is reasonably necessary for the purpose of his work.'

'4.3.3.4 Working methods which tend to cause dust or which involved the risk of spillage should where possible be avoided.'

'9.10.1 *Personal Hygiene*. In order to prevent ingestion, inhalation or other absorption of radioactive substances special attention must be paid to personal hygiene.'

'9.10.2 Eating and drinking, smoking, taking snuff and the application of cosmetics must not take place in active areas.'

The following important reminder occurs in Safety in the Animal House (page 77).[62]

'The ultimate responsibility for radiation protection lies with the employing organisation but the primary responsibility for protecting his or herself and other people from radiation hazards rests with the individual worker. Consequently nobody should be permitted to begin to use radiation sources in any form until he or she has become fully acquainted with the nature of the potential hazard and the general and local laws for radiation work.'

Responsibility before the law is not completely one-sided there are circumstances in which reciprocity on the part of an employer is demanded.

For instance, a servant is under moral duty to protect his master's goods; if:, therefore, he sees that they are in danger from, say fire, he should rescue them… On the other hand it has been held that a man who is injured in attempting to stop a runaway horse in the country, when no one is in danger, will have no claim against the owner. The law encourages the hero but dislikes the busybody.[72]

The technician as an administrator

The responsibility of the Animal Technician, as an administrator, before the law will be commensurate with his authority within the organisation for which he works. It is presumed that he is not the proprietor and so we can readily ignore such laws as the Occupiers Liability Act (1957). It is likewise supposed that he is not the employer, so that The Factory Act (1961) and similar legislation along with laws on insurance and trade unions are excluded from discussion.

Most of the law with which the Animal Technician as an administrator may be concerned, has already been touched upon. It remains merely at this juncture to highlight the salient points of his legal obligations.

Cruelty

A Chief Technician is in a position to control the activities of his subordinates in the treatment of animals and must be prompt in preventing any of them from mistreating their charges. Although the law, when legislating against 'permitting of cruelty' specifically mentions the 'owner', it indirectly indicates the responsibility of the administrator.

Is the implication of permitting cruelty is expect expressed in the 1911 Act.[73]

'(2) for the purpose of this section, an owner shall be deemed to have permitted cruelty within the meaning of this Act if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom:'[73]

Co-operation in cruelty by tacit permission or concealment may place a chief technician in an unlawful position. There are well established legal principles governing cooperation in criminal acts.

'… Suppose while doing nothing active to help and knowing nothing of the deed, be listens to a story of his exploits after it is done and then takes no steps to expose a to the appropriate authorities…' Even without actual participation, connivance, assistance in the preparation or subsequent assistance but only with'"Concealment of knowledge of the crime – B has a one-way… Being a party to the crime.'[74]

Drugs

A Chief Technician as an administrator may find himself responsible for dangerous drugs, the control of which is covered by a complex of law. Peripheral although these obligations may be to the technician's main duties, they are important. H Boyd in Safety in the Animal House summarises the legal position as regards drugs most succinctly.

The sale and supply of poisons is regulated by Part II and P III of the Pharmacy and Poisons Act (1933). The Act provides the subordinate legislation regulating *inter alia* the sale and supply of poisons, storage, transport and labelling of poisons and the compounding and dispensing poisons. Rules made under the Act will be found in Halesbury's Statutory Instruments under the title Medicine. The 1933 Act is subsequently amended by the Medicines Act 1968.[75] Except as provided by rules made under the Act, the 1933 Act does not extend to or interfere with the sale of poisons to a person or institution concerned with scientific education or research if the poisons are required for education or research. However laboratories which use animals are further affected by the 1968 Act as follow: Section 32 restricts the sale, supply, manufacturer or assembly of any medicinal product for the purpose of a medicinal test on animals. The provisions of Section

32 are exempted in the case of certain tests specified in section 33. Subsequent sections provide for the administration of the restrictions. Sections 40 to 42 restrict the supply of medicated animal feeding stuffs and incorporation of substances and articles in the animal feeding stuffs. Sections 51 to 68 restrict the sale and supply of medicinal products, including any product to be administered to animals for a medicinal purpose. 'Medicinal product' and 'medicinal purpose' are given a widespread involved definition under section 130 of the Act, to which those concerned should refer.[75] 'Reference should also be made to The Misuse of Drugs Act 1971 and regulations with regard to the supply, use, safe custody and disposal of drugs.[33]

Diseases. The Chief Technician involved with farm animals should need needs to be alert and respecting respect to the Diseases of Animal Act (1950).[76]

It (the 1950 Act) grants authority to make orders for putting into effect the general purpose of the Act. Thus the detail of restrictions imposed by the Act is to a great extent contained not in the Act itself but incident alternate legislation made under it… The volume of the subordinate legislation is so great and so varied, that it is not practical to refer to it here in detail. Those concerned with laboratory animals would be well advised to ascertain which particular orders cover their particular field and copies of those orders should be kept in the laboratory library.[77]

Most Orders associated with the 1950 Act stress the illegality not only of contravening the order but also of causing or permitting others to do so; e.g. Swine Fever Order 1963 Section 11.[78]

Records The numerous records required by law are usually the burden of the administrating technician. This duty is set is dealt with in a separate article.

Ionising radiations Some points of the codes of practice associated with the Radioactive Substances Act could be the direct concern of the technician as administrator of a large animal large research animal unit.

Section 4.3.3.3 In order to achieve proper containment all work with radioactive substances should be segregated from other work, preferably in rooms reserved solely for it. If such segregation is not practicable special care must be taken to achieve equivalent standards of safety….

Section 4.3.3.5 Laboratory surfaces and equipment should be easy to clean and to decontaminate both during normal work and during maintenance operations…

4.3.3.6 Protective equipment must be provided where necessary to prevent as far as possible contamination of the skin, hair and ordinary clothing. This it must be worn by all persons must be worn by all persons working with unsealed radioactive substances and, if there is a risk of contamination, by persons carrying out maintenance or repair work.

4.3.3.7 The protective equipment must include a sufficient supply of suitable breathing apparatus where there is liable to be a hazard from gaseous or airborne radioactive substances.

4.3.2.7 To reduce the time of exposure to the minimum, work should be to the minimum, work should be carefully planned in advance. It may well be desirable to have trial runs using a dummy source or without exposing the source or energising machine.

5.1.1 The effectiveness of protective measures must be assessed by regular monitoring both of the working environment and of the persons concerned. In each case it is necessary to assess the levels of external radiation and the amount of any contamination that may be present.

5.3.6 The film badge must be examined periodically under arrangements made by the controlling authority.

6.2.1.1 No person may be engaged on work which will require him to become a designated person unless, within the previous four months, he has been medically examined and declared fit for work for such work.

7.2.7 Arrangements should be made to ensure that persons within an enclosure can shut off quickly all sources of ionising radiation from within the enclosure, can leave the enclosure without delay and can, if necessary, obtain immediate help from outside the enclosure.

7.2.8 When the apparatus is about to be energised adequate warning should be given to all persons in the vicinity. This should be done by warning light, or audible signals or both. One or other warning signal or both, should continue to operate while the apparatus is energised. Where practicable these warnings should operate automatically and be so designed as to 'fail to safety'.

8.2.2 If the source is leaking the Responsible Person must be notified immediately. The source must be placed in a leakproof container and the area in which it is it has been used and any person who has used it must be checked for contamination. The possibility that some radioactive substances may have become airborne must be taken into consideration and if necessary, emergency procedures must be put into operation. In no circumstances must the source be used again until any necessary repairs have been affected.

9.2.4 Warning notices must be displayed at or near the boundaries of total enclosure and active and radiation

areas. Where it becomes necessary to classify an area as of an active or radiation area because of tracer work calm, the notices must be displayed while the work is in process and so long afterwards as the contamination exceeds the levels specified in appendix 2.

12.1 When not in use, sealed sources and unsealed radioactive substances should be securely stored. Stores should be in the charge of a Responsible Person and radioactive substances should only be moved into and out of the place of storage with his/her authority.

12.5 A suitable warning notice must be displayed where it can be easily read outside the place of storage except where the levels of radioactivity do not warrant it.

(iv) The bins must be stored as a properly appointed place away from sunlight and heat and identified by a label showing the nature and approximate quantity of the radioactive material contained;

(v) Storage should last until the level of radioactivity is sufficiently low to permit the fluid to be poured down the drain and the carcass to be incinerated in the normal way; and

(vi) Owing to selective accumulation of certain isotopes by certain organs it is not always necessary to preserve the complete carcass; the organs concerned should be removed from storage as above but it may be safe to incinerate the remainder of the carcasses immediately.

The Control of Pollution Act (1974) has increased penalties in connection with the Radioactive Substances Act (1960).

Safety

Although it is an employer's responsibility to keep working conditions as safe as possible for his employees, the Superintendent or Chief Animal Technician in charge of the animal units should be responsible for the safety of the personnel of his in his charge.[79]

The Health and Safety at Work Act 1974 has brought up-to-date, organised and collated all relevant material in respect to risks involved in places of employment. Obviously such a universal Act is far outside the scope of this selective review but it cannot be denied that it concerns the animal technicians at work. Short notes on the relevant points would not be out of place.

Only part one of the Act is of import to the technician. Part three, for example, is concerned with building operations. In these matters an expert would be called in and any technicians fully involved in these operations would have long passed from the realms of technology to the dizzy heights of administration.

Animals are mentioned as subject matter of health and safety regulations in Schedule three, 17 – 'imposing requirements with respect to the management of animals'.

There is no doubt that the 1974 Act involves the technician, particularly as a qualified person.

In the following quotation from the 1974 Act,the page number refers to the pages of the copies of the Act issued by her Majesty's Stationery office.[71]

p 96.6.-(1) requiring, in specified circumstances, the appointment of persons to perform specified functions and, imposing duties or conferring powers on persons appointed to perform specified functions.

(2) Restricting the performance of specified functions to persons **possessing specified qualifications or experience**.

7. Regulating or prohibiting the employment in specified circumstances of all persons or any class of persons.

8. (1) requiring the making of arrangements for securing the health of persons at work or other persons, including arrangements for medical examinations and health surveys.

(2) Requiring the making of arrangements for monitoring the atmospheric or other conditions in which persons work.

9. Imposing requirements with respect to any matter affecting the conditions in which persons work, including in particular such matters as the structural condition and stability of premises, the means of access to and egress from premises, cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionising and other radiations dust and fumes.

10. Securing the provision of specified welfare facilities for persons at work, including in particular such things as an adequate water supply, sanitary conveniences, washing and bathing facilities, ambulance and first aid arrangements, cloakroom accommodation, sitting facilities and refreshment facilities.

In some aspects of the 1974 Act throws the burden of proof of innocence upon the accused.

Page 37.40. In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with the duty requirement to do something so far as it is practicable or so far as it is reasonably practicable, or to use the best practicable means to do something, it shall be for the accused **to prove** that it is not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, although that was no better

practicable means than was in fact used to satisfy the duty or requirement.

Another peculiarity of this act is that in some cases it can be applied to the Crown. (cf section.48 – (1)).

The Act stresses the importance of communication and cooperation in matters of safety.

P 3 (3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate, revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees.

Definitions are given in the 1974 Act which may prove useful in understanding its application in practice.

Page 48.52. – (1) (a) 'work' means work as an employee or self-employed person.

P 48 (2) – Regulations made under this subsection may – (a) extend the meaning of work and at work for the purposes of this Part;

P 50 – 'employee' means an individual who works under a contract of employment, and related expressions shall be construed accordingly;

P 48 – 49 (b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise; and

'Article for use at work' means –

(a) any plant designed for use or operations by person at work, and
(b) any article designed for use as a component in any such plant;

P 51 – 'personal injury' includes any disease and any impairment of a person's physical or mental condition;

'Disease' in this context would include **Zoonosis**. Apropos to this danger, the Anthrax Prevention Act (1919) is listed among the existing enactments which are relevant statutory provisions. [80]

P 49 – 53 – (1) in this part, unless the context otherwise requires – 'agriculture', subject to subsection (3) below, includes horticulture… dairy farming, livestock breeding and keeping (including the management of livestock up to the point of slaughter or export from Great Britain),…'

Agriculture affairs have been given special exemptions in the Act.

P 13 section 15 – (1) Subject to the provisions of section 50 the Secretary of State shall have power to make regulations under this section for any of the general purposes of this part except as required regards matters relating exclusively to agricultural operations.

Matters relating to agriculture occur in section 29 and section 33 and in schedule 4.

The benefits or at least effects of the 1974 Act will be eventually felt on the shop floor, at the laboratory bench or in the animal room through regulations and codes.

P 49 'code of practice' includes a standard, specification and any other documentary or practical guidance;

Sections 15 and 16 provide for the making of new Health and Safety Regulations which will identify in detail the particular obligation to be performed in particular industries, and of codes of practice which will give practical guidance as to how the new specific statutory obligations under sections 2 to 7 are to be fulfilled. Existing legislation such as the factories act and the offices, shops and railway premises act; will be replaced by the new regulations pass under this new enabling statute and will be accompanied by a code of practice applicable to a particular industry approved and issued by the Commission. It may be noted that the commission will also approve such codes of practice which issued or proposed to be issued otherwise than by the commission as in its opinion are suitable for the purpose of providing practical guidance with regard to the requirements of the provisions under sections 2 to 7. Provision is made for the periodical review and updating of codes of practice.

It is important to note the degree of legal force which these codes of practice carry.

P 16 – 17 – (1) A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings; but where in any criminal proceedings a party is alleged to have committed an offence by reasons of a contravention of any requirement or prohibition imposed by or under way under any such provision as is mentioned in section 16 (1) being a provision which there was an approved code of practice at the time of the alleged contravention, the following subsection shall have effect with respect to that code in relation to those proceedings.

(2) any provision of the code of practice which appears to the court to be relevant to the requirement or prohibition alleged to have been contravened shall be admissible in evidence in the proceedings; and if it is proved that there was any material time at any material time failure to observe any provision of the code which

appears to the court to be relevant to any matter which is it is necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter shall be taken as proof as proof unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of of the code. So the accused must justify his alternative method.

Further embellishments of this 1974 act can appear in the form of local bylaws.

P 98 schedules 3.(22) conferring on any local or public authority power to make bylaws with respect to any specified matter, specifying the authority or person by whom any bylaws made in the exercise of that power need to be confirmed for, and generally providing for the produce for the use for the procedure to be followed in in connection with the making of any such bylaws.

The importance of these additional regulations and possible bylaws to the 1974 Act calls for careful and constant monitoring on the part of Animal Technicians involved in the higher echelons of administration.

The following points from the 1974 act are of direct concern to the technician as an administrator:-

P 96.11 imposing requirements with respect to the provision and use in specified circumstances of protective clothing or equipment, including clothing affording protection against the weather.

P 97.14 imposing requirements with respect to the instruction, training and supervision of persons at work.

15 – (1) requiring, in specified circumstances, specified matters to be notified to specified persons.

P 37.37 – (one) where an offence may be the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or had to have been attributable to ball to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or other person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to to be proceeded against and punished accordingly."

General nuisance

The Control of Pollution Act (1974) deals with the administrators responsibility in this field.[81] In the main the Act is concerned with local authorities and large institutions, such as public bodies. In sections 57 and 58, local authorities are given power to deal with nuisance caused by noise.

The GNLEA (pages 28, 38 and 39) make relevant comment on the duties of the administrator of an animal unit.[82]

The senior technician or animal house superintendent will be responsible to the director or head of Department for the day-to-day running of the animal house, but he/she may have someone to whom he can refer on matters of policy or circumstances which are unusual.

'Provision must be made the necessary services and appropriate staff: the regular feeding and watering of the animals, thorough periodical cleaning of both cages and premises, and upkeep in fuel and services of any heating or air conditioning appliance ensure installed.[82]

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