

## **LAW REVIEW**

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### **LAWYER FALLS OFF HORSE AND...GUESS WHAT...SUES**

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“The thrill of victory, the agony of defeat” are emotions usually associated with sports, but often follow the culmination of a lawsuit. In this case, they arose from both.

That is the lead sentence in today’s Opinion, written by Arthur Scotland, Chief Justice of the Court of Appeal in Sacramento. As you read on you will understand the irony of his words.

#### **LAWSUIT VICTORY CELEBRATION**

Bert and Anne Owens hosted a barbeque on their cattle ranch in celebration of a legal victory in which their attorney Ellyn Levinson successfully defeated Tehama County in a Williamson Act case. At the barbeque picnic Levinson asked Bert if she could ride a horse. She said she had ridden horses before. (You know where this is going).

Bert Owens put Levinson on Pistol, a quarter horse trained as a cattle horse, but did not inquire further about her riding experience. Levinson rode around the corral for a bit, then entered the larger field where Pistol unexpectedly broke into a gallop. Levinson’s feet came out of the stirrups, she let go of the reins, and held onto the saddle horn in an attempt to stay on. Pistol took a hard

left throwing Levinson into a fence, shattering her hip and cutting her face with barbed wire.

### SUE YOUR HOST

One good deed deserves another. Levinson so appreciated the barbeque she sued her hosts for negligence claiming they (1) put her on a horse specially trained for sorting cattle and team penning competitions (Pistol could “spin” and do “sliding stops”), (2) failed to thoroughly ask her about her skill level in riding, (3) failed to warn her of Pistol’s trained behaviors, and (4) gave her no instruction on how to control Pistol.

### TRIAL COURT

The trial court ruled for the Owens noting they were ranchers trying to accommodate their lawyer who wanted to ride a horse.

The only explanation given for Pistol’s behavior was “he was just being a horse.” Plus Levinson mounted the horse by herself and appeared in control. Lawyers do that.

The trial judge found there would be a chilling effect on ranchers throughout California if they could be sued for allowing a guest, at the guest’s request, to ride a horse at a picnic on the ranch, especially after the guest said she had ridden before. Lawyer Levinson appealed.

### ASSUMPTION OF RISK

Regular readers of the *Law Review* know this is an assumption of the risk case. Those who participate in sporting activities (or Burning Man in the Black Rock Desert) assume the risk of injuries inherent in the sport itself.

For example, horseback riders generally assume the risk, although commercial trail riding operators must supply horses that are not “unduly dangerous” and must warn the patrons renting a given horse if that horse has evidenced a predisposition to behave badly.

The Owens were not commercial operators, they simply let their attorney ride on their ranch at a barbeque picnic. Pistol was considered their “best horse,” certainly not unduly dangerous. “Imagine how awkward it would have been for Burt and Anne to question their attorney’s confident expression of competence as a horseback rider,” wrote the Court of Appeal.

Levinson assumed the risks inherent in horseback riding, and the Owens did not increase those risks.

Pistol prevails. Time for a celebratory barbeque on the ranch—or NOT.

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