MEDIA WATCH

"When free trade trumps animal protection" – to be published in the *New Law Journal*.
David Thomas argues that animal protection must be given much greater importance in international trade law.

UK CASE LAW

Covance Laboratories Limited and Covance Laboratories Incorporated v PETA Europe Limited and others[18]

On 16 June 2005 an important judgment was handed down by Judge Peter Langan in the High Court of Justice (Leeds District Registry).

The background to the case is that in 2004 a member of PETA USA obtained employment with Covance Laboratories Ltd ("CL USA") in its Primate Toxicology Department. She filmed the treatment of monkeys, including monkeys being hit, choked, taunted and terrified (apparently deliberately) by employees. She made her film into a video, and also made detailed written records of the systems and procedures used by CL USA. Her material was analyzed by lawyers and vets within PETA USA, who concluded that CL USA was committing serious breaches of federal and state legislation. On 17 May 2005 PETA USA submitted complaints against CL USA to various US bodies, and held a press conference to publicize these matters. Later the same day PETA Europe publicized them in Europe.

The following day, Judge Langan heard an application by the holding company of CL USA for an injunction to prevent publication of the video, which he granted. On 27 May and 10 June 2005 he heard submissions for the continuation of the injunction until trial. It was asserted that PETA Europe received film material "knowing that it was secret, confidential and private to" CL USA, and that PETA Europe knew that the material was taken and compiled in breach of the investigator's obligations as an employee. The injunction was discharged, on the following grounds.

The judge noted that an injunction which would prevent further publication would interfere with the right to freedom of expression, a right guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Section 12 of the Human Rights Act 1998 provides:

"(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression…

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed…"

In addition, under Section 12(4), where the proceedings relate, *inter alia*, to journalistic material (as in this case), the Act specifies that the court must also have regard to the extent to which it would be in the public interest for the material to be published.

Regarding the effect of Section 12(3), Judge Langan applied the House of Lords decision in *Cream Holdings Ltd* v *Banerjee*:[19] "the general approach should be that courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably ('more likely than not') succeed at the trial". He also applied the Court of Appeal's judgment in *A* v *B plc*,[20] in which Woolf CJ stated: "the existence of a public interest in publication strengthens the case for not granting an injunction … the fact that the

[18] Not yet published.

[19] [2005] 1 AC 253, 22.
[20] [2003] QB 195, 11.

information is obtained as a result of unlawful activities does not mean that its publication should necessarily be restrained by injunction on the grounds of breach of confidence…"

Concerning the merits of the case, the judge stated that the question of whether there was an interest capable of being the subject of a claim for confidentiality should not be allowed to be the subject of detailed argument at the interlocutory stage. Whether or not the information in the video was of its nature confidential could not be determined without a debate on the authorities i.e., just such detailed argument. He stated that it was impossible to say that the issue was one in which CL USA was likely to succeed at trial. Nevertheless, assuming for the purposes of the judgment that CL USA would establish confidentiality, he stated that even if that assumption was made "the effect of doing so is far outweighed by matters on which it is possible…to reach definite conclusions. I refer to the [defence] of public interest…" The existence of this defence made it highly unlikely that CL USA would succeed at trial. Therefore, in accordance with the abovementioned case-law, the injunction was discharged.

Judge Langan considered that concern that laboratory animals should be treated with basic decency was a matter of interest to substantial sections of the public. In the present case, the holding company of CL USA published an animal welfare statement on its website that it would treat animals with "respect" and would follow "all applicable laws and regulations". He said that a comparison of what was said in the statement and what may be seen on the video was "a comparison between two different worlds…If, as seems likely…the group of which CL USA forms part has fostered a misleading impression, PETA Europe is entitled to correct it publicly."

This ruling is greatly to be welcomed, establishing as it does that the public has a legitimate interest in being informed about animal abuse in laboratories.

Glyn (t/a Priors Farm Equine Veterinary Surgery) v McGarel-Groves and Others [21]

In this case, the defendant (Mrs McGarel-Groves) was the effective claimant by reason of her counterclaim to the actual claimant's otherwise undisputed claim for veterinary fees. The claimant (Mr Glyn) and the second Part 20 defendant (Mr Grandiere) were the effective defendants (both veterinary surgeons). Mrs McGarel-Groves sought compensation from each of them in connection with the death from laminitis of her horse Anna (a dressage competition horse), allegedly caused by an overdose of cortico-steroids.

Mr Glyn was the vet generally responsible for Anna. Mrs McGarel-Groves regarded him as responsible for Anna's health and if Anna was to be seen by another vet, Mrs McGarel-Groves always wanted him to be in attendance to ensure that Anna came to no harm.

In 2001, Anna's trainer suggested to Mrs McGarel-Groves that she had an orthopaedic problem and needed treatment with cortico-steroids. Mrs McGarel-Groves agreed, on the condition that Mr Glyn would be in attendance to observe and ensure that Anna was treated properly. She was never warned of the slight risk of laminitis that accompanied treatment with cortico-steroids.

Mr Glyn did attend Anna's treatment (by Mr Grandiere), and watched as injections were carried out. However, he stated that he did not know what drugs were administered, nor how much. He stated that the decision to carry out the injections "with all the attendant risk" was a matter for Mr Grandiere given that he was the French Dressage Team Veterinary Surgeon. He claimed that he was not present in any sort of supervisory role, and that rather he was present as an observer, and to provide a history.

[21] [2005] EWHC 1629 (QB).

It was held, however, that, having regard to the wording of Mr Glyn's invoice for the day in question, he was much more involved in the decision-making as to the nature of the treatment to be given than he claimed. Moreover, it was clear from Mr Glyn's own evidence that his duty to observe gave rise to a further duty to intervene to protect Anna if the proposed or actual treatment was in any way inappropriate. He rendered himself unable to judge whether the treatment was inappropriate by failing to ask what drugs were being injected or the dosage, and was therefore in breach of this duty.

Regarding Mr Grandiere, the judge found that there was no clinical justification for the treatment administered, and that he was therefore negligent. He should also have warned Mrs McGarel-Groves of the risk the treatment entailed.

Responsibility for Mrs McGarel-Groves' loss was apportioned between Mr Grandiere and Mr Glyn on an 85:15 basis.

Culling of non-native species

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Alien species, more correctly identified as non-native species, have been around for centuries. Indeed, it would not be inaccurate to state that much of our common wildlife falls into this category. Mammals such as rabbits, grey squirrels and fallow and muntjac deer have all been introduced into Great Britain at various times. Currently, for a number of reasons, some non-native species are a major cause of concern.

Non-native species that become invasive will almost always raise concern as they may then cause problems which can be very serious. For example, coypus farmed for their fur in the last century escaped or were deliberately released into the wild where they cause massive damage. Because of this, it was decided that they should be totally eradicated, which took two attempts over several years to achieve. A more recent example is that of the American bullfrog, a species imported into Great Britain as tadpoles to provide an interesting addition to garden ponds. Again there were escapes into the wild and further importation was banned in 1997. This article will use three case studies to illustrate different problems posed by alien species that have become invasive, and highlight the ethical dilemmas that arise when sentient creatures have to be controlled, in part because of the need to fulfil our legal obligations on biodiversity and conservation.

The first case study will examine the ruddy duck, an alien species that does not cause problems in Great Britain but presents such a threat to a critically endangered Spanish species that it is planned to eradicate the birds entirely from this country as well as any that have made their way to Europe.

The ruddy duck

A North-American species, ruddy ducks were originally imported into Great Britain by the Wildfowl and Wetlands Trust, to their centre at Slimbridge from which, allegedly, three of the ducks escaped to produce, by 2000, an estimated 5,000 birds in the wild. There they do no harm as they have found and filled an ecological niche.

However, most years, a few ruddy ducks fly to Spain where they may come into contact with the white-headed duck, a critically endangered species teetering on the edge of extinction. Mating may take place, producing hybrids, some of which will be fertile because of the close genetic relationship between the two species.

The United Nations Convention on Biological Diversity[22] requires the white-

[22] Entered into force on 29 December 1993.