

outrageous as to be outside the parameters of the jury's bailiwick. Some do not.

Am I advocating a species of super-judge? I think not. I'm advocating that we make better and more concerted efforts to select judges worthy of the challenge and awesome responsibility which they will possess and then pay them accordingly. Better judges can immediately remedy some of the concerns expressed herein. The improvement of the judiciary will improve the level of performance in our trial courts and increase the likelihood of fair and objective results.

At the end of the day, the American jury system will survive, just as the world insurance industry will survive. Some maintenance will be required, some tinkering may be necessary, and some parts may need to be retooled, or even replaced by better and more adaptable parts. But the challenges will be confronted and resolved in a manner that is less disruptive than some predict. It is my opinion that this particular pendulum has nearly reached its zenith and that the disturbing trends in our system will soon reverse and the pendulum will begin its slow descent towards inevitable future confrontations.

THE CASE OF THE DISAPPEARING HORSES. **by Gordon W. Shaw**

The solicitors in the nearby Kentish market town apologized that an upper limit of £200 had been imposed by the Law Society Legal Aid office for an expert's report. A difficult case with six apparently material non-disclosures at proposal stage. Not least, six previous convictions including dishonesty as well as GBH.

Minded to suggest they try elsewhere, I leafed through the documents. Insurance of horses has always held a personal fascination. Way back, in company employment, I had insisted on a firing operation being carried out on a thoroughbred's damaged leg, frightening threats from the placing broker notwithstanding. The owner equally insisted that the horse be put down and I was vastly encouraged when he (if a gelding be he) recovered completely and went on to win the odd selling plate.

Herbie Lee went to the high street broker to insure the three horses he had bought over the previous fortnight. "Hello Herbie" said a broker counter clerk "how's Chrissie and the kid?" Chrissie was Herbie's common law wife and the couple had been at school with the girl clerk who helped Herbie with

the proposal form, he being illiterate. Some school, you may say, yet it has a good name locally. "Still living down the Common Road?", Herbie nodded and "1 Common Road, Cucksbridge" went on the form which Herbie later signed with a cross.

The three horses (duly, you may say) disappeared, were reported to the Police as stolen forthwith and Herbie Lee put in a claim for £4,500 total loss.

Insurers, surprise, denied liability. Herbie Lee has failed to disclose

- (a) Gypsy origin.
- (b) Living in a caravan sited with others at the given address.
- (c) No rights of occupation of the concerned field where the horses were kept.
- (d) No fence other than stranded barbed wire.
- (e) No gate – the wire had to be bent back where cut to allow ingress and exit.
- (f) Previous convictions.

Herbie, I suppose, made himself a pest at the brokers' office, calling or phoning every week until the insurers, call them the Jumpers and General, duly confirmed their denial of liability. Whereat Herbie went to the solicitors next door who said "Sue the broker" which is where I came in.

It was Herbie's immediate notification to the police coupled with his persistence over the intervening months which first caught my eye. There was no way the broker's clerk was not aware of (a) (b) and (f) on the above list and it was fairly unlikely that no discussion had taken place as to where the horses were to graze and be kept at night (c, d and e). The Racial Discrimination Act came to mind as regards (a) and perhaps (b) but the case against the insurers had been abandoned.

From the list of convictions – I persuaded the solicitor that I had to see them – it was clear that Herbie, in terms of 1988 morality, was short of being a real bad hat but rather worse than your naughty boy.

About to visit friends in Frinton, I dropped off at Newmarket, luckily on a Sales day, to see a bloodstock insurance expert. After a couple of magic

hours in the sales ring, we eventually got down to Herbie's problem about 7 p.m. The Jumpers and General were a market to be avoided. By happy chance, the very next day a lead live stock underwriter was being contacted – he duly pronounced no interest in any of a proposer's convictions (“other than for stealing horses, old boy!”).

Such not being part of Herbie's form, I prepared a report, billed the solicitor showing £450 (the real cost) but “say £200” (the Law Society limit), and waited. On balance I felt Herbie had a real case against the broker who must have had imputed knowledge through his girl employee of much of what Herbie had not “disclosed”. The duty of the broker with a client who is illiterate, blind or has no grasp of commercial/legal English is not higher than his duty to all clients but it is more difficult to fulfill. The Jumpers and General have no branch organization – only a Lloyd's area underwriting office. Herbie could only contact them through his brokers who practised in his own town. So I waited and waited. So I suppose did Herbie.

Months later I learnt that Herbie's case had been transferred to another solicitor in my own immediate area. Enquiry revealed that no progress had been made (many months after my report). Next, the Law Society refused to grant Herbie a fresh certificate. Six months ago, a Herbie Lee (of gypsy origin) was reported in our local paper as guilty of recent housebreaking and bodily harm. I wonder.

**CHANGES IN TAX RATES.
PROBLEMS FOR LIFE COMPANIES.
by M.L. Dawbarn, Solicitor, Cannon Lincoln Group.**

Far reaching tax changes in this year's Budget and Finance Bill send their ripples into the life insurance industry. Amongst these are the changes in rates of basic rate income tax, capital gains tax and also inheritance tax.

Basic rate income tax and capital gains tax, now at 25%, compares with three different rates for insurance companies: 25% on franked investment income, 35% on other income and 30% on capital gains. This means that individuals not paying higher rate tax at the single 40% rate, will sometimes be at a tax disadvantage by rolling up their money in life policies rather than investing direct. Those paying higher rate tax on the other hand will have an advantage in that the higher rate charge will not be paid on qualifying policies and will be postponed until realisation on non qualifying policies. Exempt policies and those still enjoying LAPR on premiums will still have the tax balance in their favour. Life insurance taxation is at present under review and a Green